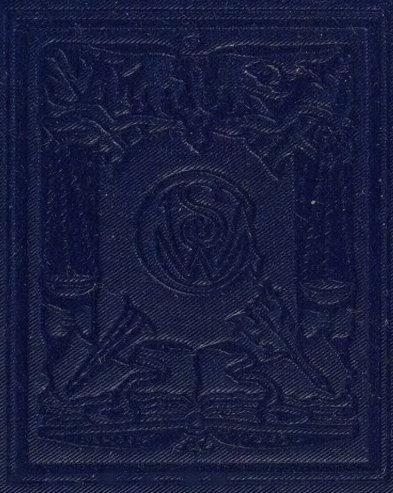

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GLENGARRY'S WAY

AND OTHER STUDIES

By the same Author

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THE RIDDLE OF THE RUTHVENS AND OTHER STUDIES

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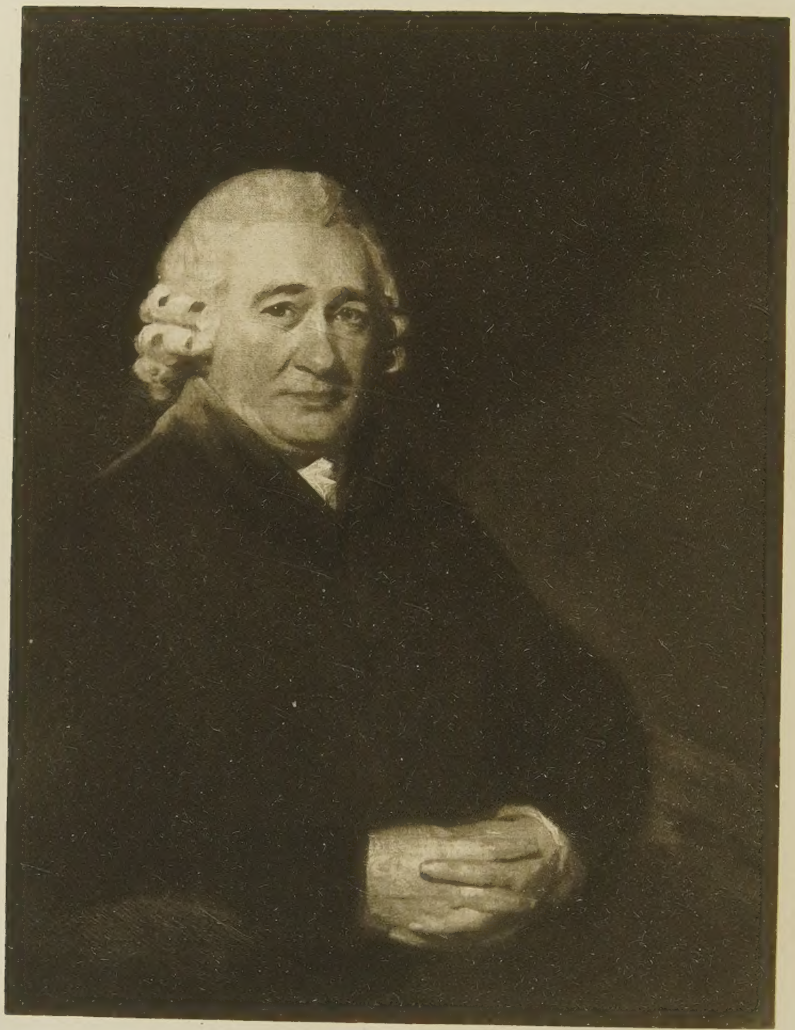

Lord Braxfield.

GLENGARRY'S WAY

AND OTHER STUDIES

BY

WILLIAM ROUGHEAD

AUTHOR OF
"TWELVE SCOTS TRIALS," "THE RIDDLE OF THE RUTHVENS," ETC.

WITH NINE ILLUSTRATIONS

I asked him what might be his immediate purpose, touching his future movements. He answered, to go to sea again, in his old vocation.
—HERMAN MELVILLE: *Moby-Dick.*

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To

HUGH WALPOLE

OLD LAMPS FOR NEW

A PERSONAL PREFACE

THERE is popular warrant for the belief that even of a good thing we can have too much, and this being my third public appearance in the same rôle, the reader, however gentle, may be tempted to exclaim with the apocalyptic martyrs, "How long?" But as in this free and happy country of ours the accused is no longer gagged, I claim my statutory right to be heard in my own defence.

In the last year of what has been termed on high official authority the Bad Old World, my first volume of essays, *Twelve Scots Trials*, saw the light. Greeted auspiciously, they were doing as well as could be wished, and seemed like to thrive, when their young promise was prematurely blighted by the whirlwind of the Great War. After the storm their youth was relatively renewed, and I am glad to know that there is yet life in them. Juliet's brave pronouncement touching the unimportance of a name has passed into a proverb; still, although a rose catalogued as a cauliflower should lose nothing of its perfume, its appeal to other than vegetarians would be largely nugatory. Sharing as I do Mr. Shandy's opinion on the magic quality residing in names, by which for weal or woe the fortunes of their possessors are influenced, I have always considered that my venture suffered in its baptism. For its title I, though the only begetter of the contents, was not responsible; but I felt from the first, and experience has confirmed the impression, that of those three fateful words two at least were unhappily chosen. "Scots" tended to arouse

hereditary prejudice in such of "our auld enemies of England" as might otherwise have been willing to lend me an ear. "Trials" suggested to the lay mind either the bloomless technicalities of law reports or the raw and ribald obscenities of the baser press. Had they been "a baker's dozen" the game would have been up indeed. Upon the first count, while I hold Scottish crime and our judicial methods of dealing with it to be more dramatic and picturesque—in both senses, more effective—than those which obtain beyond the Border, I allow that my judgment may not be free from patriotic bias. Upon the second, while I admit to strict realism, I hope that the manner of presentment is a redeeming feature. To an unwholesome craving for "sensation" as such I have ever declined to pander. They, the trials, were carefully culled as examples from three centuries of Caledonian wickedness, and their value resides in the light they cast upon the social history of our race in its darker and less admirable aspects. The repulsive blend of religious enthusiasm and abandoned depravity observable in so many cases must, I fear, be accepted as an unlovely national trait: one meets with it again and again in studying our criminal annals. While I acknowledge a general weakness for these black sheep of mine, I regard Katharine Nairn as the flower of my nefarious flock. She takes precedence, for me, of all her so gifted sisters who have played their parts in the Justiciary Opera, the unique performance of Madeleine Smith—our *prima donna assoluta*—alone excepted. The three beneficiaries of the verdict Not Proven, selected as typical instances of the abuse of that *via media* by incompetent or feeble juries, have been to my surprise mistaken by some reviewers for victims of our peculiar practice! In these, as elsewhere, I tried to state the facts impartially; yet I

should have thought that here they spoke for themselves, and that with no doubtful voice. The Dunecht and the Arran cases were objected to as being essentially inadequate to their striking and spectacular settings; but for this, of course, the narrator is in no wise to blame: it is not his fault if criminals cannot always rise to the measure of their opportunities. Not that I complain of criticism. No; my reviewers have ever tempered judgment with mercy, and I am very sensible of their long-suffering.

The late Mr. Charles E. Green, whose firm in 1913 published my book, invited me to contribute to the *Juridical Review*, of which he was then the editor, a series of similar essays. Despite the belief expressed by an optimistic critic of the volume that in it, and in other separate contributions of mine to the literature of the subject, I must have well-nigh exhausted the crop of Scottish crime, I contrived to add to my former harvest a number of fresh sheaves. These in the fullness of time were duly garnered in *The Riddle of the Ruthvens and Other Studies*, published in 1919, as to which in view of its comparative youth there is no need to say much now. I was told that some apology is due to Robert Fergusson for my exhibition of his engaging figure in such godless company, an association which was justly termed incongruous. I did so for two reasons: I wished to speak a good word for the lad, and the occasion served to say it; I also believed that his touching story would prove an acceptable antidote to the naughtiness of his companions. For the other subjects of *The Riddle* I went somewhat further afield than formerly; the historical and the criminal elements are better balanced, and I would fain hope that the interest is thereby increased. Since then I have continued in the pages of the *Juridical*, with unabated zest,

my criminous researches, and readers of that journal may have been disposed to jib at my persistent appearances. I can only plead that as a taste for these pursuits, like stamp-collecting, wife-beating, and such recondite hobbies, grows with indulgence, it is not surprising, seeing the evil communications I have so long maintained, that I myself should become incorrigible.

So here is a third gathering which I have the hardihood to put forth, and as to which I must offer some justification. Well, the paper on Glengarry was inspired by Raeburn's splendid portrait, to the end that so imposing a person should not lack some literary memorial; that on Plagium, by a curious instance of out-of-the-way wrong-doing. The longest essay, in which an attempt is made to take what is called a bird's eye view of the wide field of Scottish poisoning, exemplifies the difficulty sometimes experienced in seeing a wood for the trees. I know that it suffers from congestion, but I was wishful to cover so far as possible the whole ground. Two papers of earlier date for which no room was found in my last book are here reprinted: "Poison and Plagiary" and "The Strange Woman." Of these the Eaglesham case is important on legal, medical, and psychologic grounds. It is the first trial in Scotland and the third in Britain for murder by poisoning with prussic acid. Mrs. Mackinnon's was a famous affair in its day, and notwithstanding some disagreeable features is perhaps worth recalling. I had grave doubts as to the propriety of granting her admission, but certain local admirers have desired her presence, so here she is. If she be deemed unworthy of the entrée, the reader is welcome, with Professor Monro, to cut her dead. With the amiable purpose of keeping him, the reader, in as cheerful a frame of mind as is consistent with the character of his company,

the paper on the Edinburgh students' "rag," which affords some comic relief, has been included. As its object is purely recreative and no appeal is made to the erudite, I have in this instance dispensed with the formality of footnote references. For the rest, "The Twenty-seven Gods" is a comedy of manners municipal; Mr. Oliphant's case, legal farce with a tragic underplot; M'Kean's, melodrama of the Grand Guignol school. In the last article, that on the occasion of Lord Braxfield's bi-centenary, I was handicapped by having written elsewhere at large upon that great judge. I have tried, however, to present in a true and fairer light the attaching picture of his personality, hitherto so wantonly camouflaged by the party colours of Lord Cockburn.

Finally, I am in honour bound to give the reader fair warning: there is still grist for the mill, and it is by no means certain that he is done with me even yet.

WILLIAM ROUGHEAD.

12 Belgrave Crescent, Edinburgh,
April 1922.

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GLENGARRY'S WAY:

A FOOTNOTE TO "WAVERLEY"

GLENGARRY'S WAY:

A Footnote to "Waverley"

> Fight as lawyers plead,
> Who gain the best of reputation
> When they can fetch a bad cause smoothly off:
> You are in, and must through.
> —*A Cure for a Cuckold.*

WHEN the Author of *Waverley* designed the romantic figure of Fergus MacIvor he borrowed, we are told, certain traits for that fiery and impetuous chieftain from the character of his old acquaintance, Glengarry.(*a*)

The last of the Chiefs, the typical Celt, the enthusiastic upholder of the heritable and feudal braveries of a day that was gone, Alastair Ranaldson Macdonell, fifteenth of Glengarry, was the son and heir of Duncan Macdonell and Marjory, daughter of Sir Ludovick Grant of Dalvey. His grandfather fell at Falkirk in 1746. The date of his birth is not recorded, but we know that his parents were married in 1772, and he was their eldest child. On the death of his father in 1788 Alastair succeeded as well to the much encumbered family estates, as to the no less burdensome traditions of an ancient and, *pace* Mr. Andrew Lang, an honourable house—his granduncle was "Alastair Ruadh," the young Glengarry whom that historian seeks to identify with the notorious Pickle.(*b*) Bereft thus early of paternal guidance and restraint, the lad's indisciplined nature flourished amain in the congenial atmosphere of his hereditary position. His mother, a woman of imperious and haughty temper, alternately crossed and petted him, and until her death in 1792 did all that in her lay to spoil him.

(*a*) Mackenzie's *History of the Macdonalds*, p. 356; Crockett's *The Scott Originals*, p. 11 n. Captain MacTurk in *St. Ronan's Well* owes something to the same source.

(*b*) Macdonald's *The Clan Donald*, ii. 480; Lang's *History of Scotland*, iv. 525.

Yet he was not without certain good qualities which, like the virtues of some absolute monarch, tempered the severity of his rule. Provided due respect were paid to his pretensions, he was generous and placable enough; he exercised a lavish hospitality, having in such matters, as was said, the heart of a prince, and he grudged nothing that ministered to his ancestral pride. But whatsoever he chose to deem an affront to his dignity or privileges awoke in him the primitive passions of his Celtic sires, hardly to be assuaged but by blood—a disposition which earned for him the sobriquet of "Alastair Fiadhaich."(*a*) In the peaceful times in which his lot was cast this idiosyncrasy tended to involve its possessor with the law of the land, and like that fair litigant Miss Rugg, Glengarry had his trials, one of which it is here my main purpose to describe. He himself, of course, wore always the "Garb of Old Gaul," and when he went abroad was attended by a retinue of armed followers in full Highland costume, popularly known as "Glengarry's tail," including the family bard as professional proclaimer of his patron's state.

In 1794, on attaining his majority, Glengarry was authorised to raise a regiment, called the Glengarry Fencibles, of which he was appointed colonel. They are said to have been a fine body of men, more than half of whom were enlisted from the Glengarry estates. The corps was reduced in 1802.(*b*) Recruiting in the Highlands was, after the failure of the Forty-five, a matter of much difficulty; Culloden had cooled the martial ardour of the clansmen, and landlords had to give an extra turn to the screw. Glengarry's method with the conscientious objector of the day appears from his instructions to his agent in Inverness regarding the eviction of such of his tenants as either for themselves, their sons or their brothers, declined the honour of military service. "Their leases being expired by Whitsunday first," he writes on

(*a*) *The Clan Donald*, ii. 485.

(*b*) Stewart's *Sketches of the Highlanders*, ii. 397.

29th November 1794, "and having refused to serve me, I have fully determined to warn them out, and turn them off my property without loss of time; and as this is the first order of the kind I have given you since I came of age, I have only to add that your punctuality and expedition on the present occasion will be marked by me."(*a*) This hint was not lost upon the agent; the cottars were presently banished, and their kindly crofts knew them no more.

On 1st May 1798 a subscription ball was given at Inverness by the officers of the regiment and gentlemen of the county, which was destined to make more noise in the world than is usual for such social functions. Thither, in full panoply of chieftainship, came Colonel Macdonell of Glengarry, his bosom swelling with the pride of all the Macdonalds. Miss Forbes of Culloden, a famous beauty, was the belle of the ball; and among the guests was Lieutenant Norman Macleod of the Black Watch, son of Major Macleod and Anne, daughter of the famous Flora Macdonald. The chief, the damsel, and the lad—these are the protagonists of the tragedy; there was a lighter after-piece played that night by Miss Bell Chisholm, daughter of the Provost, supported by the gallant Captain Morrit, to which I shall return when the graver matter is disposed of. The circumstances of the fracas are shortly stated by Mrs. Margaret Macbean, a lady who attended the ball, in a letter written on 5th May to her husband in Edinburgh :—"Such wonderful events have happened here within these ten days past; the like have not been heard of in this corner of the world this many a year—an elopement and a duel in one day. I am sure your curiosity is raised, but you must have a little patience until I relate the circumstances as they happened. Well, to begin, there was a grand ball, given by the officers and some of the county gentlemen, among the rest Glengarry. He payed Miss Forbes, Culloden, a deal of attention. Lieutenant Macleod of the 42nd asked her to

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(*a*) Fraser-Mackintosh's *Letters of Two Centuries*, p. 328.

dance and she did. Glengarry wished her not, and spoke rough to Macleod. After the ball was over they quarrelled. Macleod challenged Macdonald; they fought, and Macleod has got a severe wound, but not mortal; the other has escaped without a scratch; some people would not be sorry if he got a slight wound." (*a*) Thus Mrs. Macbean gives the current version, inaccurate as we shall find in several particulars. Young Macleod's injury proved fatal, and Glengarry was indicted for his murder. After the duel that chieftain had gone into retirement, and through his Edinburgh "doer" he consulted Henry Erskine, the leader of the Scots Bar, who two years before had been deprived of the office of Dean of Faculty, as to whether or not it were safe for him to stand his trial. Erskine was of opinion that though the case was a very serious one, Glengarry ought to face the charge, and said if he returned for that purpose he (counsel) would do the best he could in his behalf. So Glengarry, electing to "stake his chance on Harry Erskine," surrendered to the criminal authorities.(*b*)

His trial, which naturally excited immense interest in the North and among the Highland advocates and writers, began at Edinburgh before the High Court of Justiciary on Monday, 6th August 1798. The judge presiding was Lord Eskgrove—(the Justice-Clerk, Braxfield, was then in his last illness)—with Lords Swinton and Dunsinnan; the counsel for the Crown were the Lord Advocate (Robert Dundas), the Solicitor-General (Robert Blair), and James Oswald; Hugh Warrender, W.S., was Crown Agent; for the pannel were the Hon. Henry Erskine, James Montgomery, and William Rae, instructed by Coll Macdonald, W.S. The proceedings are fully reported in the local newspapers of the day, upon which, and on the official record in the Justiciary Office, Edinburgh, the following account is based.(*c*) The

(*a*) *Letters of Two Centuries*, p. 335.

(*b*) Fergusson's *Henry Erskine*, p. 395.

(*c*) *Books of Adjournal*, 6th and 7th August; *Caledonian Mercury*, 9th August; *Edinburgh Advertiser*, 10th August; *Scots Magazine*, September 1798.

Court was crowded to suffocation, and the temperature was in keeping with the excitement of the auditory. The indictment sets forth that on the 3rd day of May last, on the Muir or Links between Fort George and Ardersier, the pannel did wickedly and feloniously discharge a pistol loaded with ball at the now deceased Lieutenant Norman Macleod of the 42nd Regiment of Foot, in consequence of which Macleod was wounded on the right side immediately under the arm, the ball having penetrated through the right armpit into the back; and notwithstanding every medical assistance having been immediately procured, Macleod did, in consequence of the wound so given him by the pannel, expire on the 3rd day of June thereafter, and was thus murdered by the pannel. The jury were above the average in social condition, being twelve landed proprietors in the neighbourhood of Edinburgh, a Writer to the Signet, a writer, and a merchant. Mr. James Home, W.S., the only member of his Society whom I have encountered on an assize — they were and are exempt from serving on a jury,—was elected clerk. Glengarry pleaded Not Guilty. No objection was taken to the relevancy of the libel, but Rae for the pannel argued that the wound was given in a duel into which he was drawn in self-defence, under the most imperious necessity, and therefore craved that he be allowed a proof of all facts and circumstances which might alleviate or exculpate from the charge. The Court, while holding that by the law of Scotland killing in a duel was murder, not culpable homicide, and that a person tried therefor must either be found guilty of murder or be acquitted, allowed the proof craved.(*a*)

"The libel was laid for Murder at Common Law," says Burnett in his account of the case; "and the Court, before pronouncing their Interlocutor on the Relevancy, and on the plea of Self-defence being stated, expressed in clear terms

(*a*) *Books of Adjournal.*

their opinion that the plea of Self-defence was inadmissible on killing in a Duel."(*a*)

The first witness called for the Crown was Mrs. Duff, formerly Miss Sarah Louisa Forbes, daughter of Arthur Forbes of Culloden, she in the interval between the ball and the trial having married Mr. Hugh Robert Duff, younger of Muirtown. Among other delightful reminiscences of the eccentric Lord Eskgrove preserved by Henry Cockburn is the manner in which Mrs. Duff was sworn by his Lordship:—"In the trial of Glengarry for murder in a duel," he writes, "a lady of great beauty was called as a witness. She came into court veiled. But before administering the oath Eskgrove gave her this exposition of her duty—'Young woman! you will now consider yourself as in the presence of Almighty God and of this High Court. Lift up your veil, throw off all modesty, and look me in the face.'"(*b*) In reply to the Lord Advocate, Mrs. Duff deposed that she was present at the ball at Inverness on the night in question. She danced both with Glengarry and with Macleod that evening. She was engaged for the dance after supper to Mr. Ranald Macdonald. Glengarry came up and said she had promised him that dance; she told him that she had no recollection of doing so. He took this "a little warm," went off, and presently returned to say that Mr. Macdonald had relinquished in his favour the right to dance with her. She then said that she would dance with neither of them; but Glengarry persisting to press his claim, Macleod, who was sitting beside her, remarked, "Why do you teaze the lady? can't you allow her to choose for herself; you are one of the Stewards, and may command as many dances as you please." Whereupon Glengarry "in a passionate manner" retorted, "It is no business of yours; you should not interfere." Macleod replied that he only did so in a friendly way and meant

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(*a*) Burnett's *Treatise on the Criminal Law of Scotland*, p. 51.
(*b*) Cockburn's *Memorials of his Time*, 1856, p. 122.

no offence. Glengarry seemed warm, but Macleod was perfectly calm; she danced a reel with him before leaving the ballroom, which on account of the dispute she did earlier than she intended.

Ranald Macdonald, advocate, deposed that he dined with Macleod and Glengarry in the mess of the 79th; none of the party was the worse of liquor. After dinner they went to the ball. He was engaged to Miss Forbes for the last country dance; Glengarry solicited the lady for his partner, and he gave up his own right. Glengarry and Macleod had words about the matter, but witness left the room to see some ladies to their carriage. On returning, he met the parties coming out of the ballroom; they were quarrelling. Later, in the messroom of the 79th, high words passed between them; Macleod said, "You are very impertinent"; Glengarry struck him on the bonnet with his cane. They then came down the room, still abusing each other—a long table was between them, and when they reached the foot, Glengarry again struck Macleod on the face, and kicked him. Macleod drew his dirk and the witness came between them, saying he hoped Macleod would not think of running a man through who was unarmed. They were then separated and retired to different rooms, Macleod exclaiming, "You shall hear from me, you damned eternal rascal." Fearing the consequences, witness informed Major M'Caskill, the Commanding Officer, with a view to Macleod being put under arrest, which he believed was done.

Captain Neil Campbell of the 79th Regiment, Macleod's second in the duel, described the quarrel in the messroom. Glengarry said, "It was the height of presumption for you to interfere." "Since you have followed it so far," replied Macleod, "I must tell you you are most impertinent." Glengarry then struck Macleod on the face with his cane and kicked him twice on the breech with his feet, saying, "You know what that's for; it is now daylight, and you can use pen and ink." Macleod said he

could never have believed Glengarry would behave in so ungentlemanly a manner, and drawing his dirk, added, "If I were not more of a gentleman than you, I would run you through the body." The company interposed, and Macleod and witness went to another room, where a challenge was drawn up, which he carried at once to Glengarry. A meeting was arranged at a place called the Long Loan, on the beach near Inverness, for six o'clock that morning. Macleod and witness waited there an hour, but Glengarry, because of some misunderstanding as to the ground, did not appear, and they had to leave, owing to the intervention of the magistrates, who arrived on the scene to stop the duel. They next went to Sinclair's Inn, three miles from Inverness, on the road to Fort George, where at Macleod's request witness wrote a letter to Major Macdonald, Glengarry's second, informing him of their whereabouts, and that the place was "very proper" for settling the dispute. No answer came; so they returned to Inverness, where witness waited upon the major, who said that Glengarry was then at Culloden House, but a reply would be sent in the morning. A meeting was arranged next day on the links at Campbelltown, near Fort George, where the parties met accordingly. Major Macdonald proposed an amicable settlement, to which Macleod agreed on condition that Glengarry should make an apology in writing, to be dictated by Majors M'Lean and M'Caskill, and also give up to him the cane with which he struck him, "to be used as he (Macleod) thought proper." Glengarry was willing to apologise, but refused to give up the cane; and as Macleod would not recede, the affair had to go on. The witness produced pistols and balls; as the latter proved too small he proposed to wrap them in leather, but to this the major would not assent. They then placed their men, witness suggesting ten paces, Macdonald twelve; they agreed upon eleven, the witness to give the word to fire. The parties fired almost together; Macleod was wounded but kept his ground, saying that

unless Glengarry would apologise they must load again. The seconds, however, intervened, and on Macleod admitting sorrow for what he did at the beginning of the business, Glengarry expressed regret for his share in the later stages, so they shook hands and parted. Captain Campbell was cross-examined as follows:—"(*Q.*) What use do you think Lieutenant Macleod was to make of the cane if delivered up?—(*A.*) Any use he chose. (*Q.*) Do you mean that he might inflict a blow on Glengarry with it?—(*A.*) If he thought fit to do so, he might." At Sinclair's Inn Macleod said that if Glengarry did not give him satisfaction he would post him for a coward. There was a report at Inverness that Glengarry had "shyed to fight."

Lieutenant Rymond Hicks of the 79th Regiment gave similar evidence regarding the quarrel in the messroom, at which he was present. It was then past five o'clock in the morning.

Major Duncan Macdonald of the 15th Regiment of Foot, who acted as Glengarry's second, deponed that Macleod said to Glengarry in the messroom, "You are damned impertinent," whereupon Glengarry struck him with a small cane on the bonnet. There were high words between them and Glengarry struck him again; witness interfered, and took Glengarry away. After receiving the challenge Glengarry put himself in his hands. They went to the ground proposed, but nobody came: there was a mistake as to the place of meeting. Glengarry did not see Captain Campbell's letter, written from Sinclair's Inn, as he was then at Culloden House. Later in the day witness met Captain Campbell and proposed an accommodation—the matter to be referred to Majors M'Caskill and M'Lean, friends of Macleod; but Macleod stipulated for a written apology and for delivery of the cane, to be used as he saw fit. The latter condition witness held to be inadmissible, and the meeting at Campbelltown was arranged. Next day when the parties met he again tried to effect a settlement, but Macleod insisted on delivery of the cane, to

which witness would not consent, as he never heard of a British officer making such a concession. On the parties taking the ground he objected to Glengarry's position, the sun being in his eyes; they tossed up for it, and Glengarry won. It was agreed to fire at the word of command, which they did nearly at the same time. Perceiving that Macleod was wounded he ran up to him saying, "I'm afraid you are hurt." Captain Campbell said, "It's only a scratch." "I am able to stand," said Macleod; "Glengarry, keep your ground." But Macdonald protested: "Gentlemen, I did not come here to see you commit murder. If you offer to fire another shot, I'm off." Macleod said Glengarry must apologise first; Glengarry said that Macleod must first do so. Macleod then said, "I am sorry for the beginning of this affair"; "Then," said Glengarry, "I am exceedingly sorry for the latter part of it." Finally Macleod remarked, "You must be satisfied, Glengarry, that I received your fire like a man." Witness was certain that Glengarry entertained no malice against the deceased, and was convinced that he always desired an accommodation.

Lieutenant Gordon Cameron of the 79th deposed that he met Major Macdonald on 2nd May and walked with him towards Sinclair's Inn, where they saw Macleod and Campbell. Macleod asked him what people were saying in Inverness about the matter; he replied that it was thought Macleod had acted very right and as an officer should do. "I'll give your friend one other opportunity of coming forward," said Macleod to Macdonald, "and if he doesn't, I shall expose him." While waiting for Glengarry's return from Culloden House, Macleod asked witness his own opinion. He answered, "If Glengarry can reconcile what he has done to his own feelings, I think you have done enough to vindicate your honour as an officer and a gentleman, by sending repeated challenges, and he not coming forward."

James Macpherson of Ardersier deposed that while returning home from Fort George on 3rd May he met a

soldier, who cried, "For God's sake run forward, and prevent bloodshed!" He heard the report of a pistol, and coming to the place saw the parties. Glengarry said to Macleod, "You must say you meant no insult"; Macleod replied, "That is what I have always said," adding that Glengarry must now consider him a gentleman and a man of honour. Thereupon they shook hands and parted.

Ensign John M'Curry of the 7th Fencible Regiment, who was in company with Mr. Macpherson, corroborated. Lieutenant Andrew Miller of the 78th Regiment of Foot deposed that on 2nd May, in the Muir of Culloden, he received from Macleod, after he had left Sinclair's Inn, a letter directed to Captain Campbell, pressing for an immediate meeting with Glengarry, which he duly delivered. Macleod said he would accept from Glengarry no apology other than that formerly mentioned.

Ebenezer Brown, assistant surgeon, 79th Regiment, deposed that he accompanied Captain Campbell in a post-chaise to Campbelltown, where he understood a duel was to be fought. He waited in the chaise for some time, and when summoned to the ground, found Macleod wounded by a pistol ball under the right armpit. He was carried to Fort George, where the ball was extracted from below the left shoulder blade. For the first fortnight he seemed to be recovering, but on the fifteenth day he became worse, and died on 3rd June, thirty-one days after receiving his injury. James Roy, surgeon to the garrison of Fort George, and James Moir, surgeon, 7th Fencible Regiment, who attended Macleod in his illness, corroborated. They performed a post-mortem and made a report, which they identified. The reading of this document, entitled, "Note of Appearances on the Body of Lieutenant Macleod, upon Examination after Death," closed the Crown case.

Two witnesses only were examined for the defence: Miss Jean Walecoat, daughter of Captain Thomas Walecoat, residing in Inverness, who gave as to what happened at the ball an account similar to that given by Mrs. Duff, with the

addition that she thought Glengarry then rather the worse of liquor; and Lieutenant William Macdonald of the 37th Regiment, who corroborated what had been stated in evidence as to the proposed posting of Glengarry as a coward, and the reports circulated at Inverness to his prejudice for declining to meet Macleod.

The proof being closed, counsel addressed, and Lord Eskgrove charged the jury. No report of these speeches has survived; it is merely mentioned that "the Lord Advocate summed up the evidence for the Crown in an elegant and impressive speech, as did the Hon. Henry Erskine for the pannel in his usual eloquent manner. Lord Eskgrove charged the jury, and recapitulated the evidence with great candour and impartiality." Thus the *Mercury* reporter; but from what Henry Cockburn tells us of his Lordship's judicial methods, both jury and audience, which included "a great number of Ladies and persons of Rank and Fashion," must have had a trying time. "His tediousness," writes Cockburn, "both of manner and matter, in charging juries was most dreadful. It was the custom to make juries stand while the judge was addressing them; but no other judge was punctilious about it. Eskgrove however insisted upon it; and if any one of them slipped cunningly down to his seat, or dropped into it from inability to stand any longer, the unfortunate wight was sure to be reminded by his Lordship that 'these were not the times in which there should be any disrespect of this High Court, or even of the law.' Often have I gone back to the court at midnight and found him, whom I had left mumbling hours before, still going on, with the smoky unsnuffed tallow candles in greasy tin candlesticks, and the poor despairing jurymen, most of the audience having retired or being asleep; the wagging of His Lordship's nose and chin being the chief signs that he was still 'char-ging.'"(*a*) At four o'clock in the morning of Tuesday, 7th August, his

(*a*) *Memorials of his Time*, p. 123.

Lordship having exhausted at once his subject and the patience of his hearers, the jury was "inclosed," and ordained to return their verdict in the same place that day at noon, "the pannel in the mean time to be committed prisoner to the Tolbooth of Canongate," and the Court adjourned.(*a*)

It appears that the line taken by Erskine in his speech was an appeal to the jury on the point of honour, stress being laid on the persistent efforts of Major Macdonald and his principal to offer every kind of apology consistent with their character as gentlemen. His biographer adds that he was careful to note, and to make the most of in his client's behalf, the animus displayed by the Crown witnesses; but, so far as reported, these seem to have given their evidence with commendable fairness. Erskine began his address at midnight and spoke for three hours. So confident was Glengarry of the result of this "splendid appeal," that he objected to await the verdict in the Tolbooth; but Erskine dryly remarked, "If Glengarry is wise he will return to prison." (*b*)

When the Court met next day the crowd was greater than ever; popular sentiment, which hitherto had been against the accused, now favoured an acquittal, and the unanimous finding of Not Guilty was greeted with prolonged applause. The verdict having been recorded, the Chancellor of the Jury (Charles Brown of Coalstoun) explained that the sole ground on which it proceeded was the anxious desire latterly manifested by the pannel and his second amicably to settle the matter, as the jury highly disapproved of his conduct at the beginning of the dispute, and it was fortunate for him that the duel did not take place so soon as intended, before any attempt was made to apologise, as in that case they would have returned a very different verdict. Lord Eskgrove expressed approbation of the jury's sentiments, adding some characteristic observations on the

(*a*) *Books of Adjournal.*
(*b*) *Henry Erskine*, p. 396.

illegal and dangerous practice of duelling; Lord Swinton, while assenting generally to the jury's views, deprecated the tendency to turn a Court of Law into a Court of Honour, and described duelling as "a horrid Gothic custom," which the Legislature had done everything in its power to discourage. The pannel was then assoilzied and dismissed from the bar, and the Court rose.(*a*)

That Glengarry was lucky to escape so easily the consequences of such a discreditable business was the opinion of his contemporaries, professional and lay. The trial, in the considered judgment of Burnett, "ought to have had a very different issue"; (*b*) and Fraser of Gortuleg writes on 7th August to the agent for the defence: "I cannot avoid congratulating you on Glengarry's escape, which was narrow indeed. . . . I sincerely wish he may make good use of the hairbreadth escape." (*c*) Glengarry's friends, with questionable taste, gave him "a great dinner" at Oman's Hotel in Edinburgh, to celebrate his acquittal. Henry Erskine was invited, but declined, as his admiration of the part played by his client in the late tragedy was not sufficiently strong to admit of his being present.(*d*) There is an interesting letter, written on 14th August, by Glengarry's law agent and kinsman, Coll Macdonald of Dalness, W.S., giving his own impressions of the case, which is worth quoting:—"I have yet scarcely recovered from the fatigues of Glengarrie's trial. You would have several public as well as private accounts of it, but none can give an adequate idea of the whole of what appeared in the course of it. The Lord Advocate exerted the utmost pitch of his abilities, and the verdict returned does not meet with the general approbation of the public, though I for one am convinced that it is a proper verdict, warranted by the evidence adduced. The public voice was so much against

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(*a*) *Books of Adjournal.*
(*b*) *Criminal Law*, p. 51.
(*c*) Fraser-Mackintosh's *Antiquarian Notes*, Second Series, p. 138.
(*d*) *Henry Erskine*, p. 397.

Glengarry that not a single one among his friends thought that he would have been acquitted by a unanimous verdict. If you compare the *Mercury* and the *Advertiser* account, it will convey a tolerable good criterion of the import of the evidence, though several material things are omitted in both—particularly no notice is taken of a letter signed 'Neill Campbell, Captain, 79th Regiment,' which Captain Campbell denied to be his subscription. It was wrote to the publisher of the *Courant*. The evidence of Mrs. Duff is the subject of general talk ; without doubt you will hear it. She remained in court to the last. The Lord Advocate paid very many compliments to her beauty, etc., in the course of his speech, but the Chancellor of the Jury said she was the best evidence for Glengarry of all that had been adduced." (*a*) It is a curious fact that with the exception of a brief reference in Sabine's *Notes on Duels and Duelling*, no mention of so notable an affair of "honour" is made in any of the standard works on the subject.(*b*)

The other incident associated with the famous ball at Inverness was the elopement of two of the other guests, Miss Bell Chisholm, the Provost's daughter, and Captain Morrit, who, as the writer of the letter already quoted informs us, "set off at twelve o'clock at night in a carriage and four" for Elgin, making for Aberdeen. It appears that the captain's attentions had been discouraged by the young lady's family, who declined his acquaintance. She was not missed till eight o'clock the next morning, when the Provost, accompanied by two friends, at once started in pursuit. "Their intention is to marry her whenever they meet her, and I hope that Captain Morrit never intended anything but what was honourable," says Mrs. Macbean, though she is not sanguine as to the issue of the adventure. "Every person is sorry for Miss Chisholm," she significantly adds, "for you know what Morrit is." (*c*) Let us hope,

(*a*) *Antiquarian Notes*, Second Series, p. 139.
(*b*) *Notes and Queries*, 12. S. v. 43.
(*c*) *Letters of Two Centuries*, p. 336.

however, that the captain proved better than his reputation; history is silent as to the denouement.

Glengarry's high spirit was untamed by this experience of the law. The next we hear of him is as the principal defender in a civil action of damages for injury and oppression, at the instance of Dr. Donald Macdonald of Fort Augustus, before the Court of Session. The pursuer, who was tenant of one of Glengarry's sheep farms, was of a disposition as fiery as his laird. The ill-feeling between them was of long standing, it culminated in a personal scuffle, and notwithstanding the intervention of common friends, the doctor, considering himself the aggrieved party, refused Glengarry's demand for an apology. A favourable opportunity presenting itself at Fort Augustus market, on 30th September 1805, the doctor was severely beaten by Glengarry and some of his "tail." The legal proceedings taken by him to obtain redress dragged on until 23rd June 1807, when the case was decided in his favour. The defenders, Glengarry, his factor, his piper and three other retainers, were found guilty of "a violent and atrocious assault on the person of the pursuer, to the effusion of his blood and danger of his life." As, according to the judgment of the Court, this outrage did not originate in a sudden quarrel, but was the result of long-premeditated resentment and a deliberate purpose of revenge, and was moreover attended with many circumstances of great barbarity and peculiar aggravation, "especially on the part of the defender Alexander Macdonell of Glengarry," the defenders were found liable in £2000 sterling of damages, as well as in the expenses of the process. Further, in respect that Glengarry was at the time of committing the offence a Justice of the Peace and Deputy-Lieutenant of the county, the Court remitted to the Lord Advocate to consider whether, in view of "the ungovernable resentment and violence" manifested by Glengarry, it was proper he should be continued in those offices, and also whether he should not be prosecuted criminally. "Though not recovered from the dismay of our

discomfiture," writes his agent, Coll Macdonald, "I think it right to communicate a copy of the interlocutor. . . . The malicious are now making an attack on Sir James Montgomery [the Lord Advocate] for not taking it up criminally, and to every one concerned a certain share of censure is allotted in the conversation of the Parliament House. In particular the ladies took a great interest for the doctor." An appeal to the House of Lords was contemplated; whether it was ever taken, and if so how it fared at the hands of that alien tribunal, is unrecorded.(*a*)

In any case Glengarry seems to have been none the worse for the judicial thunders. Certainly his inveterate desire to quarrel was unabated, for within the year we find him on the brink of a duel with Rothiemurchus—there was a lady in the case—which was only averted by the good sense and offices of Colonel Halkett and other peacemakers, who saw in the circumstances "no necessity for proceeding to extremities."(*b*)

One would have expected Glengarry to have had enough of Inverness dances, yet an incident, in itself sufficiently ludicrous, arising out of the Northern Meeting ball in 1810 which he attended, was to involve him in another criminal prosecution. The Hon. Archibald Fraser of Lovat, also one of the party, on leaving the ball took by inadvertence Glengarry's hat instead of his own. So soon as he reached his hotel he discovered his mistake, and at once sent the hat to Glengarry's lodging. "Next day, being Sunday," writes Lovat to his kinsman, the Sheriff of Inverness-shire, "I went to the High Kirk, when I was summoned in the middle of the sermon, and called out by a message that Glengarry insisted on seeing me on pressing business. I came out of kirk to the alarm of the whole congregation, who concluded that I had got a military express or was taken ill. Upon going to Fraser's Hotel, not two hundred yards distance, I found Glengarry gone out of town, after

(*a*) *Antiquarian Notes*, Second Series, pp. 139–142.
(*b*) *Letters of Two Centuries*, p. 355.

beating open my locked door, in which there was a good deal of money and papers in a law contest I have with him . . . my apartment being ransacked, and his hat not found. The door was left open by Glengarry, who in a supercilious, dictatorial tone of voice halloo'd to the landlord to have the lock mended at his, Glengarry's, expense. The manners of the gentleman I overlook; but as a public man I demand Glengarry and all the world to be made sensible that any man's apartment is his sacred castle, and that it is criminal to break it open under any pretence without legal warrant."(*a*) Here were the makings of a pretty quarrel; but owing to the delicate health of Glengarry's wife at the time — he had married in 1802 a daughter of Sir William Forbes of Pitsligo, and a result of that transaction was looked for—Lovat magnanimously delayed action for three months. When the lady was out of danger, however, he invoked the aid of the law. The Crown refused to prosecute, but intimated willingness to concur in a process of criminal letters to be raised by Lovat, which was accordingly done. Later, on the advice of friends, the proceedings were withdrawn.

In addition to these personal actions Glengarry, in his capacity of landlord, was constantly involved in litigations with his numerous tenants, in most of which he seems to have been unsuccessful. He was hardly more happily inspired in raising with Clanranald the vexed question of the chieftainship of the Clan Donald, that controversy so long and warmly waged, upon which so much ink and temper have been wasted.

Scott's *Letters*, *Journal*, and *Life* afford many and more agreeable glimpses of Glengarry in social and friendly relations with Sir Walter. On 3rd March 1816 the chief writes offering to present to Scott the historic staghound: "His name is Maida, out of respect for that action in which my brother had the honour to lead the 78th High-

(*a*) *Letters of Two Centuries*, p. 361.

landers to victory. This dog is now in his prime, and has been bled to deer and roe, and should you wish for more of the deer blood for yourself, command me freely." Scott accepted the gift, which on 12th April he describes to Joanna Baillie as "a large bloodhound, allow'd to be the finest dog of the kind in Scotland, perfectly gentle, affectionate, and good-natured, and the darling of all the children. I had him in a present from Glengarry, who has refused the breed to people of the very first rank." (*a*) Glengarry's brother was the celebrated General Sir James Macdonell, K.C.B., "the bravest man in Britain," who is remembered for his holding of the gate at Hougoumont.(*b*) He it was who, when Landseer asked leave to paint him, replied in the emphatic words of Scripture, "Is thy servant a dog that he should do this thing?" (*c*) Apart from Raeburn's supreme presentment, the best portrait we have of Glengarry is that given a few years later by Sir Walter in his Diary:—"I had a call from Glengarry yesterday, as kind and friendly as usual. This gentleman is a kind of Quixote in our age, having retained in their full extent the whole feelings of clanship and chieftainship, elsewhere so long abandoned. He seems to have lived a century too late, and to exist, in a state of complete law and order, like a Glengarry of old, whose will was law to his sept. Warm-hearted, generous, friendly, he is beloved by those who know him, and his efforts are unceasing to show kindness to those of his clan who are disposed fully to admit his pretensions. To dispute them is to incur his resentment, which has sometimes broken out in acts of violence which have brought him into collision with the law. To me he is a treasure, as being full of information as to the history of his own clan, and the manners and customs of the Highlanders in general. Strong, active, and muscular, he follows the chase of the deer for days

(*a*) *Familiar Letters of Sir Walter Scott*, i. 358.
(*b*) *History of the Macdonalds*, p. 355.
(*c*) Skene's *Memories of Sir Walter Scott*, p. 177.

and nights together, sleeping in his plaid when darkness overtakes him in the forest. He was fortunate in marrying a daughter of Sir William Forbes, who, by yielding to his peculiar ideas in general, possesses much deserved influence with him. The number of his singular exploits would fill a volume; for, as his pretensions are high, and not always willingly yielded to, he is every now and then giving rise to some rumour. He is, on many of these occasions, as much sinned against as sinning; for men, knowing his temper, sometimes provoke him, conscious that Glengarry, from his character for violence, will always be put in the wrong by the public. I have seen him behave in a very manly manner when thus tempted. He has of late prosecuted a quarrel, ridiculous enough in the present day, to have himself admitted and recognised as Chief of the whole Clan Ranald, or surname of Macdonald. . . . It is absurd to set up the *jus sanguinis* now, which Glengarry's ancestors did not, or could not, make good, when it was a right worth combating for." (*a*)

It is probable that Sir Walter's sentiment for his friend was coloured by the fact that Glengarry's wife was the daughter of his own first love. The marriage was a happy one, for contrary to custom Glengarry seems to have shown himself most amiable in his domestic relations, and a family of one son and seven daughters—six sons had died in infancy—formed the home circle at Garry Cottage. Invergarry House and shootings were, owing to the chief's embarrassed circumstances, always let. Æneas Ranaldson Macdonell, the son and heir, was a source of great pride to his parents. He was a good scholar and distinguished himself when at Perth Academy.(*b*) Like his father, the lad was a keen sportsman. "The young Laird of Glengarrie kill'd a hart shooting at a hind," the Duke of Atholl's keeper reports to his Grace in January 1824, "which pleased Glengarrie and the young man as much as if it had been a

(*a*) *The Journal of Sir Walter Scott*, i. 120.

(*b*) *Antiquarian Notes*, p. 147; *History of the Macdonalds*, p. 359.

MACDONELL OF GLENGARRY.

(After the portrait by Sir Henry Raeburn in the National Gallery of Scotland.)

hart in season"; and the same month Lord Charles Murray writes to the Duchess: "Glengarry is in town, having come up to bring Æneas to Eton. He tells me that he has a good idea of the Gaelic, and that he killed his deer, and slipped the hounds for his father before he crossed the Tweed, according to an ancient vow made by a Glengarry to that effect. To accomplish this they went to the Forest of Atholl, and M'Intire's [the keeper] good generalship proved quite successful." (*a*)

I lack space to recount the many anecdotes of Glengarry which may be gleaned from the several authorities upon whom I have so largely drawn, but of an incident mentioned by Sir Walter one would gladly have found room for more. "We have had Maréchal Macdonald here," he writes to Skene from Edinburgh on 24th June 1825; "we had a capital account of Glengarry visiting the interior of a convent in the ancient Highland garb, and the effect of such an apparition on the nuns, who fled in all directions." Scott used to tell the story with great delight.(*b*) Something good, too, must underlie the following reference in a letter to William Stewart Rose of 12th October of that year: "Glengarry's helmet is true enough; but why speculate on what can come either *in* or *on* such an extraordinary head?" (*c*)

The visit of George the Fourth to Edinburgh in August 1822—that regal orgy of snobbery *in excelsis*—provided Glengarry with a part to play after his own heart. Scott stage-managed what he terms "this most royal row"—"a sort of grand 'Terryfication' of the Holyrood chapters in *Waverley*," is Lockhart's apt description—when the fat Florizel (aged 60) appeared as Bonnie Prince Charlie, and Sir Walter as the Baron of Bradwardine; and we read how the green room in Castle Street was "besieged by swelling chieftains," disputing fiercely as to the relative positions of

(*a*) *Atholl Chronicles*, iv. 348.
(*b*) Skene's *Memories*, p. 132.
(*c*) *Familiar Letters*, ii. 356.

their clans at Bannockburn, which they held to be the precedent for determining their respective places in the line of the King's escort; and with what unwearied good-humour Scott adjusted their competing claims and smoothed their ruffled plumage—a task beyond the ability of any other man in Scotland.(*a*) Glengarry came well out of these rivalries, for we find him in command of the Glengarry Highlanders, of whom since 1808 he had been Lieutenant-Colonel, guarding the royal carriage on the King's arrival at Leith. "After his Majesty was seated in his carriage, Glengarry on horseback forced his way through every obstacle, and advancing close to the royal carriage exclaimed, 'Your Majesty is welcome to Scotland!' a salutation which was returned by a most gracious bow from the Sovereign."(*b*) In the State procession from Holyrood to the Castle on Thursday, 22nd August, the Glengarry Highlanders, headed by their chief, attracted much attention. "Glengarry has a small, but select following; twelve gentlemen of his house, amongst whom we noticed the gallant Colonel Macdonell, brother of the Chief, and famous for his achievements at the defence of Hougoumont, where, assisted only by a serjeant of the Guards, he slew or drove back six French grenadiers, who had forced their way into the courtyard. Also we saw Barrisdale, Scothouse, Major Macdonell, and other cadets of this ancient line. Each had a gillie in attendance—tall, raw-boned, swarthy fellows, who, besides the sword and target, carried guns of portentous length. We believe they are chiefly the foresters of the Chieftain; and indeed they look as if they had done nothing all their lives but lived by hunting, and slept in the woods."(*c*) Glengarry must have been gratified by this public appreciation of his "tail." At the great banquet in the Parliament House on 24th August, which rounded off the royal visit, immediately after the toast, "The Author of *Waverley*, whoever he may be,"

(*a*) Lockhart's *Life of Scott*, v. 192.
(*b*) *Historical Account of His Majesty's Visit to Scotland*, p. 101.
(*c*) *Edinburgh Weekly Journal*, 21st August 1822.

Glengarry, "in a warm speech, in which he dwelt at some length upon the virtues and patriotism of one who, he said, had been the patron of his early life," proposed the memory of Lord Melville.(*a*) He dined more quietly with Scott in Castle Street, when the poet Crabbe, who was so amazed by the "Celtic invasion," was also of the party and took "Lady Glengarry" in to dinner.

This was Glengarry's apogee. Like Fergus MacIvor, he had "stretched his means to the uttermost to maintain the rude and plentiful hospitality which was the most valued attribute of a chieftain." Times had changed; his estates were heavily burdened, and despite raised rents and the constant stream of emigration to make way for sheep farms, his circumstances became daily more straitened. He realised too late the need for retrenchment. Visiting his kinsman, Captain Duncan Macdonell of Aonach, in the summer of 1827, he remarked, "Duncan, I have been thoughtless; I have been, as I thought, sustaining the honour of my ancestors; but now I see that I have been wasting the heritage that generations of them have left me. I must turn over a new leaf, I am determined to do it; I am going south by-and-bye to have this business definitely arranged."(*b*) But it was not to be. On 14th January 1828, the steamboat *Stirling Castle*, aboard which he was making the journey from Inverness to Glasgow, broke down after leaving the Canal, and was driven ashore in a gale at Corran, near Fort William. Glengarry, in attempting to leap from the stranded vessel to the shore, slipped upon the rocks, and in falling received a violent blow on the head. He was able to reach safety with the help of his companions, but died a few hours later.(*c*) He was buried in the cemetery of Killionan, beside the chieftains of his race, and the bards made loud lamentation for the tragic fate of him who had striven so long and proudly to main-

(*a*) *Historical Account*, p. 243.
(*b*) *History of the Macdonalds*, p. 358.
(*c*) *Edinburgh Advertiser*, 25th January 1828.

tain the old magnificence of bygone days.(*a*) "I have this day the melancholy news of Glengarry's death, and was greatly shocked," writes Sir Walter Scott on 21st January. "The eccentric parts of his character, the pretensions which he supported with violence and assumption of rank and authority, were obvious subjects of censure and ridicule, which in some points were not undeserved. He played the part of a chieftain too nigh the life to be popular among an altered race, with whom he thought, felt, and acted, I may say in right and wrong, as a chieftain of a hundred years since would have done, while his conduct was viewed entirely by modern eyes, and tried by modern rules."(*b*)

On Glengarry's death his affairs were found to be so seriously involved that the estates had to be sold, and his son and successor, by a strange irony of fate, emigrated to Australia, as so many humbler members of the clan had already done to Canada, in quest of the livelihood denied them in their native land.(*c*) All that remained to the family of the great territories of their forebears was the blackened ruin of Invergarry Castle, the eyry of that eagle race, ravaged, like the fortunes of its owners, by the passions of the Forty-five.(*d*)

(*a*) *The Clan Donald*, ii. 488.
(*b*) *Journal*, ii. 113.
(*c*) *History of the Macdonalds*, p. 361.
(*d*) *The Clan Donald*, ii. 475.

PLAGIUM:

A FOOTNOTE TO "GUY MANNERING"

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A Footnote to "Guy Mannering"

"Pardon me," said Pleydell, "it is *plagium*, and *plagium* is felony."
—*Guy Mannering.*

IN *An Apology for Idlers*, that delectable essay which is to the Greeks foolishness, Robert Louis Stevenson, looking back on his own education, remarks, "I still remember that Emphyteusis is not a disease, nor Stillicide a crime." Whether or not his stock of legal knowledge was so extensive as to embrace the true significance of *plagium* or man-stealing, we cannot tell; but it is beyond the peradventure of a doubt that Mr. Ebenezer Balfour of Shaws, falsely so-called, and Captain Elias Hoseason of the brig *Covenant*, of Dysart, in kidnapping David Balfour as they did for the delight of the posterities, were guilty, art and part, of that unconventional offence, and jointly and severally incurred whatever may be the precise penalty lawfully thereto belonging. Such also, in the opinion of that excellent lawyer Mr. Counsellor Pleydell, was the crime committed by those earlier rascals, Gilbert Glossin, Esquire, "late writer in . . . ., now Laird of Ellangowan," and Captain Dirk Hatteraick of the *Yungfrauw Hagenslaapen*, in their machinations against the person of little Harry Bertram.

Readers of Scott's incomparable tale need not to be reminded how the child Harry, accompanying Supervisor Kennedy to the Wood of Warroch, was, after the gauger's murder by the smugglers, kidnapped by them at Glossin's instigation, and conveyed to Holland for a season; and how, after divers diverting adventures, mainly through the good offices of Meg Merrilies he recovered the heritage of his fathers, a consummation to which the genial Edin-

burgh advocate materially contributed. When Glossin was about to be committed to prison for his share in the conspiracy, the wily ci-devant writer took exception to the magistrates' decision. "Forgive me, Mr. Pleydell," said he; "there is only one case upon record, Torrence and Waldie. They were, you remember, resurrection-women, who had promised to procure a child's body for some young surgeons. Being upon honour to their employers, rather than disappoint the evening lecture of the students, they stole a live child, murdered it, and sold the body for three shillings and sixpence. They were hanged, but for the murder not for the *plagium*. Your civil law has carried you a little too far." But Mr. Pleydell's statement of the law as it then stood was sound, and Glossin, as we shall see, was wrong. Torrence and Waldie's case was not the sole authority.

The eminent Sir George Mackenzie, treating of "Some Crimes punished amongst the Romans, which are not directly in use with us," observes: "*Plagium* was the stealing of Men, and was punishable by death, which agrees with the Law of God, Exod. xxi. 16, Deut. xxiv. 7. And with us Egyptians and others stealing Children have been likewise punished by death, and such as force away Men to be Souldiers should be lyable to the same Punishment, though the Council uses to punish them only by an arbitrary punishment; and such as take away men's Children upon pretext to marry them, before they come to the years wherein they may give a legal Consent (which is 12 in Women and 14 in Men), ought in my judgement to be so punished." (*a*) The *crimen plagii* of the Roman law might be committed either by selling a free man into slavery, which was a capital crime, or by enticing, concealing, or buying the slave of another, whereof the punishment was at first pecuniary by the *lex Flavia*, and afterwards discretionary, according to the degree of

(*a*) *Laws and Customs of Scotland in Matters Criminal*, Part I. tit. 36.

the fault.(*a*) In modern practice *plagium* or the theft of a human being applies only to young children. The penalty is incurred whether the child be enticed away or carried off by force, and whatever be the motive. Sentence of imprisonment varies with the degree of guilt.(*b*) In former times, however, on the theory that it was a treasonable usurpation of the Royal authority in detaining the King's free lieges without his licence or commission, it was punishable with death.(*c*)

Thus, as appears from the official records, on 12th January 1604, George Meldrum, younger of Dumbreck, who was charged with invading, taking captive and carrying away three persons, including Mr. Alexander Gibson of Durie, one of the Clerks of Session, whom he conveyed out of Fife by Kinghorn and Edinburgh, through Lothian, and by Melrose into England, being convicted, was sentenced to be beheaded at the Cross of Edinburgh and his estate forfeited to the Crown. On 23rd November 1649, Lieutenant Mark Ker and others were pursued for the rapt and taking away of Robert Cunninghame, a boy of fourteen, from the possession of his uncle and tutor, Harry Cunninghame. The libel was sent to an assize after debate on the title of the uncle to pursue, which was sustained. On 4th July 1664, James, Viscount Frendraught, was indicted for carrying off and detaining in a private prison, Alexander Gregory of Netherdale, and for the murder of the said Mr. Alexander, or being art and part of these crimes, and the libel was found relevant, though the pannel was assoilzied. On 25th March 1720, occurred the very curious and interesting case of Sir Alexander Anstruther of Newark, which, as I propose to deal with it later and at length, may meantime be passed over. On 18th December 1727, David Colquhoun, maltman in Dumbarton, and William Buntine, son of William Buntine of Auchendennan, accused at the instance of John

(*a*) Dig. lib. 48, tit. 15, l. 1.6.7.
(*b*) Macdonald's *Criminal Law*, p. 24, and authorities there cited.
(*c*) Hume on *Crimes*, 1819, i. 82.

Campbell and John Ewing, wrights, burgesses of said burgh, and Archibald Porterfield, another burgess, were charged with assaulting and trying to carry off Campbell and Ewing from an election, but failing in the attempt they cruelly beat, bruised, and wounded them; and actually carrying off Porterfield by putting him on board a boat, swearing him to secrecy, and lodging him in the house of Levenside, locked up in a room, and thereafter taking him to one of the islands of Loch Lomond, and keeping him there until the election was over, when he was set at liberty. The Court found the libel respecting the carrying off of Porterfield and keeping him under restraint relevant to infer an arbitrary punishment, damages and expenses; but the charge was found not proven. These doings at Dumbarton are even more remarkable than the electioneering amenities of Eatanswill.

The next case upon record is that cited by Glossin: His Majesty's Advocate against Helen Torrence and Jean Waldie: of which a brief report is given by Maclaurin in his instructive treatise.(*a*) A more particular account of the circumstances is contained in the *Scots Magazine* for February 1752.(*b*) It appears from these authorities that Torrence and Waldie were brought to trial on 3rd February 1752 for the crimes of *plagium* and murder, committed upon the person of John Dallas, a boy of eight or nine years of age, son of a chairman in Edinburgh. The women were sick nurses of the school of Mesdames Gamp and Prig. In the preceding November they undertook to procure for certain apprentice-surgeons a suitable subject; they were to sit up with a dead child, and proposed at the coffining to substitute something for the body. The parents of the subject, however, prevented the completion of this plan. For some time the two hags had the boy Dallas under observation; he was ailing, and in the opinion of Torrence,

(*a*) *Arguments and Decisions in Remarkable Cases*, pp. 152–153.
(*b*) Vol. xiv. pp. 98–99.

if he were to die "would be a good subject for the doctors." Repeated inquiries as to his health found him no worse, and Torrence, becoming impatient, resolved to assist nature. On 3rd December Mrs. Dallas called upon her, presumably to thank her for the interest she took in the case. Waldie, who lived in the flat above, happened to be present. She went up to her own house and knocked on the floor, whereupon Torrence followed her up and after a short consultation returned to her visitor, whom she invited to a neighbouring tavern to drink to the invalid's recovery. While the mother's attention was thus engaged Waldie went to her place of abode, found the boy looking over the window for his mother's return, took him up in her arms, and carried him "in her gown-tail" to her own house, where she was immediately joined by Torrence. They confessed that they then choked the child by a forcible administration of ale. So soon as he was dead they went to inform the young surgeons that they now had a subject for them. The apprentices came, saw the body, and offered two shillings for it. The hags protested against the inadequacy of the remuneration, "declaring that they had been at more expenses about it than that sum"; but when the lads increased their offer by "tenpence to buy a dram," the bargain was closed, and Torrence carried the body in her apron to their rooms, for which she received a bonus of sixpence. The parents raised a hue and cry for the missing child, and four days later the body, bearing evident marks of having been in anatomical hands, was found "in a place of the town little frequented." The parents were arrested, and subsequently the two women. The apprentices told their tale, the parents were released, and the women committed for trial.

When the case came before the High Court on 3rd February, counsel for the pannels represented that although the actual murder might be relevant to infer the pains of death, the stealing of the child could only infer an arbitrary punishment; and as to the selling of the dead

body, it was no crime at all.(*a*) To this it was answered that though the stealing of the child when alive, disjoined from the selling of it when dead, might not go so far, yet when taken together they were undoubtedly relevant to infer a capital punishment. The Court found the libel relevant, and after proof, which included the evidence of the child's parents and of the apprentice-surgeons, the jury returned the following special verdict: "Find that the pannels are both guilty art and part of stealing John Dallas, a living child, and son of John Dallas, chairman in Edinburgh, from his father's house at the time and in the manner libelled; and of carrying him to the house of Jean Waldie, one of the pannels; and soon thereafter, on the evening of the day libelled, of selling and delivering his body, then dead, to some surgeons and students of physic." Counsel having been heard on the import of this verdict, the Court repelled all the objections taken. Helen Torrence then "pleaded her belly" in arrest of judgment; upon which four midwives were appointed to examine as to her condition. These experts having reported that she was not with child, the Court adjudged her and the other prisoner to be hanged in common form. They were accordingly executed in the Grassmarket on 18th March. "Both acknowledged their sins, and mentioned uncleanness and drunkenness in particular."

The case of Sir Alexander Anstruther to which I have referred is in many respects remarkable and worthy of notice. Though interesting and important it has left little mark upon the law books; only one or two brief references to it are made by our criminal writers,(*b*) and it may well have escaped the learned eye of Mr. Glossin. Apart from the singularity of the charge and the picturesque quality of the evidence, the social and professional status of the principal accused is in such a connection unusual;

(*a*) Comfortable words these for Messrs. Burke and Hare.

(*b*) Hume, ii. 113; Burnett, pp. 109, 385.

one seldom sees a knight, an advocate, and an official of the Court of Session involved in a criminal prosecution. The printed report of the proceedings, too, is rare; the small quarto pamphlet of fifty-one pages, to which I am indebted for the facts, was at one time in the possession of James Maidment, the antiquary, who describes it on the fly-leaf as "a very scarce Scottish Tryal," and indeed I have never come across another copy. The title page reads as follows: "The Criminal Process At the Instance of Edward Copinger and Henry Cowie, Sailers, and His Majesty's Advocate; against Sir Alexander Anstruther of Newark, and James Black. Taken from the Books of Adjournal. Edinburgh, Printed by James Watson, His Majesty's Printer. 1720."

The protagonist was a scion of the ancient and honourable house of Anstruther of that ilk, one of the oldest families in Fife. His father, Sir Philip Anstruther of Anstruther, nephew and heir to that Sir William who had been a gentleman of the bedchamber to James the Sixth, was knighted by Charles the Second at Scone in 1650. A zealous Royalist, he was taken prisoner at Worcester, and his estates were sequestrated until the Restoration. He had seven sons, of whom two were baronets of Nova Scotia, and three were knights. The creation of Nova Scotia baronets, a pleasant device of King Jamie for raising the wind, ceased on the union of the Crowns.(*a*) The members of this distinguished brotherhood with whom we have to do are Sir Alexander of Newark, Sir Philip of Anstrutherfield, Sir Robert of Balcaskie, and Sir John of Anstruther, who seemingly succeeded his father in the estates. Wood remarks that John "probably died before 1690"; but he was alive and in the enjoyment of the lands and barony in 1720, as appears from the record of the trial.(*b*) A family so

(*a*) "I ken the man weel; he's one of my thirty-pound knights."—*Eastward Hoe*, Act IV. Sc. i.

(*b*) Wood's *East Neuk of Fife*, pp. 359–360.

handsomely endowed with titles and of such criminous proclivities recalls the bad Baronets of *Ruddigore*. Sir Alexander, with whose amiable eccentricities we are chiefly concerned, was Sir Philip's fifth son. Admitted a member of the Faculty of Advocates in December 1692, he was later appointed Principal Clerk of the Bills. He had a charter, 23rd June 1704 (confirmed 12th February 1722), from Sir George Brown of Coalstoun, Knight Baronet, with consent of his spouse, of the lands of Newtonleys, in the county of Haddington. In another charter of 1728 he is designed brother german of the deceased Sir Philip Anstruther of Anstrutherfield.(*a*) This, apart from the legal proceedings of which he was the subject, is all that I have been able to glean anent Sir Alexander.

The prosecution is in the form of Criminal Letters, the private prosecutors or complainers being Edward Copinger and Henry Cowie, sailors, late on board the ship *Anne and Margaret* of Leven, with concurrence of Sir David Dalrymple of Hailes, Baronet, his Majesty's Advocate, against Sir Alexander Anstruther of Newark, advocate, one of the Principal Clerks to the Bills, James Black, skipper and master of the said ship, and Bailie James Graham of Anstruther, accused "of the most atrocious Crimes of Hamesucken, *Plagium* or Man-stealing, and gross Oppression." The facts as stated in the charge are briefly these: Sir Alexander, who for some time past, over and above his professional and official duties, "dealt in foreign Trade as a Merchant," had an interest in the voyage of the *Anne and Margaret*, which in the spring of 1719 sailed from the Firth of Forth with a cargo of salt "for Ports beyond Sea." On the return of the ship to Scotland in the autumn "Brandy in prohibited Casks" was seized aboard her by the Custom-house officers, and two of the crew, Copinger and Cowie, were examined before the Barons of Exchequer as to the "clandestine Importation" of the spirits. The

(*a*) Riddle's *Baronetage of Scotland*, MSS. Advocates Library, vol. viii. p. 114.

knight, the skipper, and the bailie, who were jointly interested in this unlawful venture, perceiving that Copinger and Cowie "might be made Use of as Witnesses in a judicial Trial for discovering and punishing the said Frauds and Imbezelments," determined "to withdraw the Complainers as Evidences and disappoint the Effect of their Testimonies." In pursuance of this natural but illegitimate purpose the three merchant adventurers, having traced the intended witnesses to Crawfordsdyke in Renfrew, "upon the River of Clide," whither they had retired for rest and privacy, came accoutred with swords, pistols, "or other invasive Weapons," about midnight on Saturday, 27th November 1719, to the change-house of that village, where the two sailors were "sitting in a peaceable Manner, preparing to go to Bed." After threatening the inmates with a pistol, the party forcibly seized and carried off the mariners, dragged them on board a boat, and so "transported them from Place to Place through the Country, sometimes under Cloud of Night; and unlawfully confined them as Prisoners for several Weeks" in the houses of Newark, Anstruther-field, and Balcaskie, from which imprisonment Cowie ultimately escaped, and Copinger was liberated at the instance of the Crown authorities.

It appears from a note on the report that "Tho' the Criminal Letters are raised against Bailie James Graham of Anstruther, yet he could not be got in due Time cited to the 25th of March, which was the Day appointed for the Trial." Hence the bailie's non-appearance at the bar along with his brother bandits. A formidable array of counsel was engaged in the proceedings. Walter Stewart, Advocate-Depute, with Charles Erskine, Robert Craigie and Peter Wedderburn, conducted the prosecution; Sir James Stewart, Alexander Hay, James Gordon and John Forbes appeared for the defence. Erskine, as Solicitor-General, in 1736 assisted in the prosecution of the celebrated Captain Porteous; Sir James Stewart was the son of the Lord Advocate Stewart invidiously known as "Wily Jamie."

Copinger and Cowie were not examined as witnesses, their evidence being adduced in the form of an affidavit made by them on 7th October 1719, which deals only with the question of the smuggled brandy. In this document the complainers set forth on oath that in the beginning of May last they were hired by Sir Alexander Anstruther to sail in the *Anne and Margaret* from Scotland to Hamburg. At Pittenweem the ship took on board 80 or 90 tons of foreign salt. She then sailed round to St. Andrews Bay, "betwixt Crail and the Red Head," where 60 or 70 tons of the cargo were landed in fishing boats, the master and mate superintending the trans-shipment. She next sailed for St. Martins in France, where the remainder of the cargo was landed, after which she left in ballast for Bordeaux, where a cargo of wine and brandy was shipped, which they understood was for Scotland, "tho' they were all caution'd by the Master (in case there was need) to say, That they were bound for Bergen in Norway." From Bordeaux they returned to St. Martins, where they re-shipped the salt previously landed, and being thus loaded began their homeward voyage. When the ship reached the Forth about the end of August, "there was a Man sent on Shore to St. Andrews to give Notice thereof." On the two following nights "eight Boats were loaded out of the said Ship with Quarter Casks of Brandy, and sent on Shore," the son and son-in-law of Bailie Low of St. Monans having charge of the boats, and the captain and mate checking the casks.

Among other documentary evidence produced by the complainers was a Custom-house Certificate of Cargo of the *Anne and Margaret* on her outward voyage, which bore that she sailed for Danzig on 25th May 1719 with 1657 bushels of foreign salt for account of Sir Alexander Anstruther; a Certificate of Seizure of 462 casks, containing 4700 gallons of brandy, "being prohibited to be imported"; a Warrant for apprehending Sir Alexander and his co-partners, upon which they were imprisoned in the Tolbooth of Edinburgh; and a Warrant for liberating

the prisoners, they having found sufficient caution that they would stand their trial. Appended to the Criminal Letters was a list of 51 witnesses in support of the charge, of whom, however, only 20 were called. The indictment was laid both at common law and on the clause of the Act 1701, c. 6, anent wrongous imprisonment, and concluded for fine, deprivation of office, and incapacity of public trust.

On 25th March 1720, "when this Libel was called before the High Court of Justiciary, the Procurators for the Pannels offered some Objections against the Relevancy and also some Grounds of Exculpation, and insisted on several Pretences and Excuses for the Pannels; To which Answers being made, Parties were ordained to inform." The Informations, or written pleadings for the parties, are not less lengthy than learned. It was argued for the defence that what occurred at Crawfordsdyke amounted to no more than a common riot; that there was nothing in the nature of Hamesucken, "since they [the pursuers] were not dragged from their own Dwelling-house"; nor of *Plagium*, "since it was not *lucri faciendi causa*, and in order to sell them into Slavery." The pursuers were detained by the defenders as "necessary Witnesses for proving an Exculpation in case of a Trial of the Frauds alleged to have been committed." Their confinement could not come under the Statute, which had no concern with imprisonments made by private persons *in privato carcere*. It was further pleaded in exculpation that no violence was used to the pursuers at Crawfordsdyke, and even had such been employed, "yet that was taken off and remitted by their going voluntarily along all the rest of the journey," during which they had several opportunities to escape had they been so minded.

To this it was answered that in view of the "black and detestable" character of the crimes charged, the pannels ought to be thankful that they were no worse off, there being "good Reason for heightening the Punishment to a higher Pitch than is here done." Hamesucken was com-

mitted, as the pursuers were invaded by men in arms in their quarters at Crawfordsdyke, where they had for some time resided. As to *Plagium*, the motive was "the saving, if possible, the Reputation of the Pannels and their Cargo, by putting them [the pursuers] out of the Way, either by sending them as Slaves to foreign Countries or disposing of them in a worse Manner." The effect of the Act 1701 "is the same as to Restraint of personal Liberty both with regard to those clothed with publick Authority, and private Persons; the Injury to the Person is the same, and the Affront in the last Case is higher." As to the facts: threats and violence were used in carrying the pursuers out of the house to the boat; they remonstrated against that violence and "expressed their Griefs" to divers persons by the way; the pannels guarded them as prisoners, riding before and behind them; Copinger offered money to one of the servants to inform the Sheriff of their plight; the later separation of the prisoners "and shifting their Residence in the Night-time, is an undeniable Mark that all these Doings were the Works of Darkness"; and finally, Cowie's escape, and Copinger's liberation only in consequence of a complaint against Sir Alexander and upon a Bail-bond for his appearance given by Sir Philip under a high penalty to produce him, confirmed the truth of the indictment.

On 1st April the Lord Justice-Clerk (Adam Cockburn of Ormistoun) and the other Lords of Justiciary, having heard parties, pronounced an interlocutor finding (1) the invasion and threats at Crawfordsdyke, (2) the forcible carrying-off and putting on board the boat, and (3) the detention under restraint in the houses of Newark, Balcaskie and others, each relevant to infer an arbitrary punishment, and in the last case, damages and expenses also; repelled the defenders' whole objections; and remitted the libel, as found relevant, to the knowledge of an assize. On 4th April a jury was accordingly empannelled, which included such "representative" Edinburgh citizens as Sir

James Rochead of Inverleith (who, being himself a Nova Scotia baronet, may be supposed to have had some sympathy with the principal offender), and William Ged, goldsmith, the inventor of printing from stereotype plates. The prosecutors then adduced their proof.

Elizabeth Kelburn, spouse to Robert Sinclair, Innkeeper in Crawfordsdyke, with whom Copinger and Cowie had lodged, stated that between 11 and 12 o'clock on the night in question certain strange men came to her house and knocked civilly at the door, which was bolted. When she drew the bolt they rushed into the house and seized hold of her lodgers, who were sitting by the fire making ready for bed. On her remonstrating one of the invaders, producing a pistol, "desired the Deponent to hold her Peace, for that should be her Portion." They then took their prey by the arms and carried them out; Cowie had taken off his stockings, and next morning her son found Copinger's hat lying on the quay. She could not identify the pannels as her invasive visitors, "there having been no Candle-light in the House, nor other Light except the Light of the Fire."

Richard Graham, merchant in Glasgow, said that in November last he was desired by Sir Alexander and Skipper Black "to provide a Boat and some Men to the Key of Crawfordsdyke for carrying off the Pursuers Copinger and Cowie," which he did, and was present when they were taken prisoner at Sinclair's house. Both pannels were armed, and he saw Black threaten the woman with a pistol. Bailie Graham was also of the party. The captives were marched down to the quay; "it being dark he did not see them put aboard the Boat," but he heard a cry of "Murder!" and another cry "desiring them to stop his Mouth." He also heard "a great Struggle and Noise" during the embarkation. As the boat put off, he, rather gratuitously, "wished them a good Voyage." Witness believed that neither of

the men "would have gone away if they could have shunned it."

James Boyd, sailor and a neighbour of Sinclair, heard "a Noise of Feet, and saw a Bulk of People together which went down the Key, and heard a Voice crying 'Murder,' and a Voice crying, 'Toss them into the Boat,' and did see a Boat go off from the Shore."

James Smith, another neighbour, "was designing to go to Bed," when he heard the cry and the trampling of feet. He took a lantern and went down to the quay, where he heard the sound of oars and also "Strokes given, but whether they were upon a Man's Back or not he cannot tell."

John Spiers, merchant in Greenock, said that on the day on which Cowie and Copinger were captured he was "in a Company at New Port-Glasgow"—presumably meaning in a public-house—when Skipper Black and one who resembled Sir Alexander were present. One of them asked him "if he knew that two Stranger Sailers, who were employed by the Commissioners of the Customs, were at Crawfordsdyke?" He replied "that the said Strangers lodged in Mrs. Sinclair's."

So much for the seizure at Crawfordsdyke; the captives were rowed across the Clyde, and the story is taken up by witnesses from the other shore. Elizabeth Porterfield, spouse to Alexander Porterfield in Hill of Ardmore, said that about midnight, her household being abed, there came to her door some boatmen of New Port-Glasgow, with five other persons, three of whom "looked like Gentlemen," and called for lights and a fire. One of the other two complained of a hurt knee, having been "taken uncivilly from his Quarters." The boatmen addressed one of the gentlemen as Mr. Black. They remained till the next morning, when they left for the Ferry of Bonhill.

William Lindsay, "Ferrier at the Boat of Bonhill," said that the pannels and some others, five in all, came to his house about 10 A.M. and asked for a room. He

identified Copinger and said that he wrote his name, Edward Copinger, with chalk upon the back of a bed, but Black came in with pistols "and rolled out the name." Copinger complained of a sore knee which he had got by being forced aboard a boat, and gave witness his keys to deliver to the Collector of Customs at Greenock. That evening there came a servant of Sir Alexander with four horses, and next day, being Sunday, other two horses were hired by Sir Alexander from witness for the prisoners' use. Copinger said that if he was to be treated as he had been the night before, "he would not go along with them although he were dragged," and Sir Alexander assured him that he need fear no harm. The party then set out for Drymen, the captives riding the two hired mounts.

John Stewart, Bonhill, who was in Lindsay's house, corroborated.

Andrew Miller, maltman in Drymen, said that the pannels hired two horses from him "the Length of Airth" for Copinger and Cowie. Witness accompanied the party to bring his horses back. At Mill of Touch Copinger offered him a guinea to go to Stirling and ask the magistrates to rescue him, but witness declined to meddle in the matter.

James Telfer, Sir Alexander's man, said that by his master's orders he brought the horses to Bonhill. He went with the party to Drymen, and so by Mill of Touch to Airth; "thence to Higgins-nook, where they boated all the foresaid Persons, and landed at Kincardine; and from thence they came to Anstrutherfield on Monday, about 6 or 7 a Clock at Night." Horses were hired for the captives' use from Bonhill to Drymen, and from thence to Airth; those hired at Airth "were carried over the Water with them" to Kincardine. (The hiring of the several horses was also established by other witnesses.) After staying a night at Anstrutherfield the prisoners were removed to Newark, where "the Deponent every

Night he lay in the Room with the Complainers, bolted the Door on the Inside."

Sir Philip Anstruther of Anstrutherfield gave evidence as to the granting of a Bail-bond by him for the production of Copinger. He instructed Bailie Murray of St. Monans to enquire for the missing witness; the bailie, who "had been at some Pains to find him out," ultimately produced him up to time, and the Bail-bond was discharged. Sir Philip was asked no questions as to the scene of Copinger's sequestration.

Anne Kilgour, maidservant at Newark, said that she saw Copinger and Cowie in a room there several times in November and December last. She had seen Telfer in the chamber with them and sometimes found the door locked.

William Galloway, servant at Newark, saw the complainers brought there by Sir Alexander and Black. "For the most Part they kept their Room." After a few days Sir Alexander ordered witness to take Cowie "in the Night-time to the House of Balcaskie," which, accompanied by his fellow-servants Steedman and Knox, he accordingly did, delivered him to John Fairfoul, servant to Sir Robert Anstruther, and saw him put in a room there. Some days later the same three men by Sir Alexander's orders "rode along with Copinger to the House of Ardross, likewise in the Night-time," and delivered him to John Lorimer, servant to Sir John Anstruther of that Ilk. After Cowie's escape from Balcaskie, Sir Alexander ordered them to remove Copinger from Ardross "to the House of Craighall in the Night-time and on the same manner," where he was delivered "to a Maid of the House and was carried up to a Room." After remaining there some days he was by Sir Alexander's orders brought back to Newark, where "he staid in his Room as in the former Time," until his liberation at the instance of the Crown authorities.

Robert Steedman and Robert Knox, both Sir Alexander's servants, corroborated. They relieved each other and Telfer

in "laying with the Complainers" at night at their various places of pilgrimage.

John Lorimer, Sir John's servant, said that at Ardross Copinger was kept in a room about eight days. He was locked in, except when Steedman lay with him, who told witness "he had Instructions to take Care that Copinger should not escape."

John Fairfoul, Sir Robert's man, said he put Cowie in a room at Balcaskie, "in which Room he continued for Eight or Ten Days, during which Space he neither went abroad from the House nor from one Room to another." Witness locked him in at night, but "at last he made his Escape out of the said House by pulling off the Lock which was upon the Chamber-door, and got away betwixt going away of Day-light and the lighting of Candle." The servants went in search of him but could not find him.

Thomas Dobie, a fellow-servant, corroborated. Cowie was locked in his room and Fairfoul kept the key. He added that Cowie had offered him half a guinea if he would go and tell his wife where he was detained, "but he [witness] refused to accept the Commission."

This closed the complainers' proof, and the defence offered no evidence. The addresses of counsel are not recorded. As it was not then the practice for the presiding judge to charge the jury—a custom initiated by Lord Kames at the trial of Katharine Nairn in 1765, (*a*) —we have not the advantage of a judicial summing up of the evidence; but to me it humbly appears that the complainers had fully established their case. Nevertheless the jury did, upon 4th April, "by Plurality of Voices find the first and second Parts of the Interlocutor not proven," *i.e.* the charges relating to the violent seizure at Crawfordsdyke, and the forcible embarkation there; "and with one Voice find it proven, That the Complainers were carried from the Boat of Bonhill through the Country to

(*a*) *Twelve Scots Trials*, p. 128.

the Shire of Fife by the Pannels, likewise that Mr. Cowie was detained under Restraint in the house of Balcaskie, but we do not find the Restraint to have been by the Pannel's Orders"!

This amazing verdict must surely have been the subject of debate, but the report contains nothing further than the interlocutor of Court, pronounced on 15th April, by which the pannels were assoilzied and dismissed from the bar. I should like to have had a word with my respectable kinsman, Sir James Rochead, as to the jury's finding; I can only hope that at least he voted in the minority.

One wonders how Sir Alexander and his myrmidons proposed to deal with their prisoners had the one not been rescued from their clutches and the other effected his escape. The Information for the complainers darkly hints that "the worst was to be suspected, if by good Providence the Contrivance had not been seasonably found out and disappointed." The excuse urged for the pannels that in acting as they did they were merely safeguarding their own witnesses so as to prevent them being "got at" by the Revenue officials, is sufficiently ludicrous; but they can hardly have been prepared, in their zeal for the suppression of evidence, to go the length of murder.

Whether or not any further steps were taken against them on the smuggling charge I have been unable to discover. Those were spacious days, and it is probable that Sir Alexander's reputation with the sporting baronets who formed his family circle in no wise suffered from his devotion to the Free Trade principles; while among his brethren of the Parliament House his professional standing may even have been enhanced by reason of his unique experience in criminal practice, and his familiarity with both sides of the bar.

LOCUSTA IN SCOTLAND:

A FAMILIAR SURVEY OF POISONING, AS PRACTISED IN THAT REALM

LOCUSTA IN SCOTLAND:

A Familiar Survey of Poisoning, as Practised in that Realm

Fie on these dealers in poison, say I; can they not keep to the old honest way of cutting throats, without introducing such abominable innovations from Italy?

—*On Murder, Considered as one of the Fine Arts.*

IT is strange that a critic so acute as De Quincey, while extolling the rude methods of the mere manslayer, should hold in light esteem the poisoner's delicate and nimble art. Such attaching cases as that of Miss Blandy or of Captain Donellan shall never, he protests, have any countenance from him; and the instance which he selects as a palmary example of the purest and most perfect style is that of the savage Williams, who exterminated with a carpenter's maul two whole families in Ratcliffe Highway. As in the case of other artists before and since, quantity rather than quality seems to have been Mr. Williams' note, and his best bit of work was his last—the hanging of himself in a prison cell with his own braces.

Regard being had to the relatively rare occurrence of poisoning in Scotland, it would appear that De Quincey's view was largely held by local exponents of the homicidal cult. Possibly the national sense of thrift counted for something in the matter; drugs were dear and hard to come by, but the meanest could command a knife. Be that as it may, one of our chief connoisseurs, King James the Sixth, followed his native bent in employing the stake, the dagger and the gibbet for the elimination of such of his Scots subjects as were repugnant to the Royal pleasure—compare his unnumbered witch-burnings, *passim*, and the butchery of the Gowrie boys at Perth. Not until His Majesty enjoyed the refining influence of the Italianate Court of

England did Prince Henry eat at Woodstock the impoisoned grapes, and Sir Thomas Overbury die lingeringly in the Tower, attended by the King's mediciner, after a liberal exhibition of realgar, mercury, white arsenic, and dust of diamonds. The last named sounds the most attractive, but doubtless it was all one to the patient: "What would it pleasure me," asks the Duchess of her murderer in Webster's great tragedy, "What would it pleasure me to have my throat cut with diamonds? or to be smothered with cassia? or to be shot to death with pearls?" Queen Mary, so amazingly James's mother, a princess, by reason of her French upbringing and natural gifts, infinitely superior to the gang of noble ruffians about her throne, wrote to Bothwell once, deprecating his crude purpose of blowing up her petulant spouse with gunpowder: "Advise to with zourself gif ze can find out ony mair secreit inventioun by medicine, for he suld tak medicine and the bath at Craigmillar." Poison, she wisely implies, would make less noise than powder; but the hint was thrown away upon the rude Borderer, and more than Darnley was exploded at Kirk o' Field.

For the curious in homicidal pharmacy the accounts of early cases preserved in our records are provokingly scant. This is due as well to the ignorance of the amateur practitioner, as to the ineptitude of physicians in failing to detect him in his interesting pursuit. The pioneer of poisoning groped his way, as it were, in a scientific wilderness, where was "nor path nor friendly clue to be his guide," while the professed man of medicine was better versed in the mysteries of the heavenly, than in those of merely human bodies. The first Scots Act to recognise the crime of poisoning as such is that of 1450,(*a*) whereby all persons are forbidden under pain of treason to bring home poison for any use by which any Christian man or woman may take bodily harm. "But notwithstanding of these

(*a*) 7 James II. c. 31 and 32.

words," observes Sir George Mackenzie, "Apothecaries and others do daily bring home Poyson"; indeed, whatever the Legislature might intend, the Statute was practically a dead letter, for he adds, "I find no instances in the Journal Books where any have been convict as Traitors upon this account."(*a*) Thus the provision was of no benefit to poisoners, who suffered on the scaffold the common doom of homicides, without the added distinction of mutilation and dismemberment.

Passing such hazy instances as the suspected poisoning of Margaret Drummond, mistress of James the Fourth, in April 1502, the earliest case of the kind in our records is that of the Lady Glammis. Jean Douglas, grand-daughter of "Bell-the-Cat" and sister of Archibald, sixth Earl of Angus, a lady famous alike for beauty and virtue, had provoked the wrath of James the Fifth by her attachment to her brothers, the banished Douglases, of whom the King had sworn that while he lived they should never find refuge in Scotland. As the only member of her family on whom the Royal hands could be laid, Lady Glammis was rancorously harried by divers criminal prosecutions, and finally, upon false evidence, done to death. Her first husband, John, Lord Glammis, having died in 1527, she had married a Campbell. In 1532 she was indicted for taking the life of her former spouse "*per intoxicationem*": contriving his death not, as might appear, by driving him to drink, but by means of drugs, charms and enchanted potions. The lords and lairds summoned as jurymen upon her trial, believing her innocent, refused the office; they were fined and the proceedings dropped.(*b*) Five years later, however, the attack was renewed in another form. One William Lyon, who unsuccessfully had sought her favours, was found to bear false witness against her; in July 1537 she was tried and convicted, upon what evidence we do not know, for conspiring to destroy the King "be poysone," and for treasonably

(*a*) *Laws and Customs of Scotland in Matters Criminal*, tit. viii.
(*b*) Pitcairn's *Criminal Trials in Scotland*, i. 157*, 158*.

assisting her Douglas brothers.(*a*) The judges delayed sentence, and represented the case to His Majesty as one meriting the Royal mercy; but James was not inclined to be clement—the law must take its course. So the hapless lady was burnt alive upon the Castle Hill of Edinburgh, "with great commiseration of the people, in regaird of her noble blood and singular beautie."(*b*) Her husband, in attempting to escape from the Castle, fell down the rocks and was killed; her son, the young Lord, was kept a prisoner till the King's death. The traditional belief that Lady Glammis suffered for witchcraft is erroneous: she died a victim to political spite, "as I can perceyve," Sir Thomas Clifford, the English Ambassador, reported to King Henry VIII. at the time, "without any substanciall ground or proyf of mattir."(*c*) In the following month Alexander Makke, convicted of making and selling poison, and of concealing Lady Glammis' treason, was condemned to have his ears cut off and to be banished for life to Aberdeen.(*d*) One wonders how the Aberdonians liked the compliment.

During the troublesome reign of Queen Mary her subjects were probably more occupied with politics than with poison, for we find but two cases upon record: Henry and Patrick Congiltoune, for "the cruel Slaughter by Intoxication" of their nephew, in October 1554;(*e*) and Adam Colquhoune, for the murder of a servant and the attempted murder of his mother and stepfather "by that secret method of Poison or Intoxication," in March 1562.(*f*) The wicked uncles escaped, but the other practitioner was hanged and his body burnt to ashes on the Castle Hill.

Under the Solomonic sway of King James the Sixth, when evil-doers increased and multiplied and, reversing the divine command, did their best to displenish the earth,

(*a*) Pitcairn, pp. 187*, 191*.
(*b*) *Ibid.*, p. 195*.
(*c*) *Ibid.*, p. 198*.
(*d*) *Ibid.*, p. 203*.
(*e*) *Ibid.*, pp. 368*, 369.
(*f*) *Ibid.*, pp. 419*, 420*.

poisoning shared in the revival of naughtiness. The popular belief in witchcraft, which by precept and example that enlightened monarch did so much to foster, rose to unparalleled heights, and the Records of Justiciary for the time abound in witch-trials, wherein charges of sorcery and poisoning are inextricably mingled. An examination of these, however entertaining and instructive, would take us too far; nor does space permit enquiry into the mystery attending the death of the Earl of Atholl, after a feast of "reconciliation" given in April 1579 by his rival the Regent Morton, who was popularly credited with his taking-off. Cases more strictly relevant are that of Helen Cunninghame in January 1579,(*a*) for "Ministering of Poysoun to William, hir spous," and of Andro Glencorse in February 1580,(*b*) for "the poisoning of Issobell Staig, his spous." Both were convicted and duly suffered. In December the same year took place the trial of Laurence, Lord Oliphant, for the slaughter of Alexander Stewart, "schot with ane poysonit bullet." He was acquitted.(*c*) The only other instance of this peculiar form of crime occurred in June 1609, when the turbulent Border baron, John, Lord Maxwell, treacherously slew with two poisoned bullets Sir James Johnstone of that Ilk, who had superseded him as Warden of the West Marches.(*d*) In neither case is any proof of preliminary poisoning recorded; perhaps it was inferred merely from the symptoms, or from the morbid appearances.

The year 1590 is memorable for the Great Oyer of Witchcraft—the series of trials following upon the Saturnalia at North Berwick, as to which King James was so curious—but the case of Katharine, Lady Foulis, in July of that year, must have occasioned more scandal in Scots society.(*e*) This lady, a daughter of Ross of Balnagowan and the second wife of Munro of Foulis, was charged with poisoning and witchcraft, the intended victims being her brother's wife and her own stepson; the object, to bring

(*a*) Pitcairn, i. 80. (*b*) *Ibid.*, p. 84. (*c*) *Ibid.*, pp. 89, 90.
(*d*) *Ibid.*, iii. 28 *et seq.* (*e*) *Ibid.*, i. 192–201.

about a marriage between her brother and her stepdaughter. Fortunately matchmaking mothers seldom carry their scheming to such sinister lengths. We are not here concerned with the witchcraft charges, interesting and typical though they are, based upon the dealings of Lady Foulis with certain sorceresses, "haldin and reput rank commoune Vichis in the countrey." These hags, who varied their necromantic practices by the purveying of poisons, were employed by her ladyship to furnish "ane stoup-full of poysonit new aill" for the destruction of the young laird of Foulis; but the lady, having tried its efficacy upon a boy, who only "thaireftir tuik seiknes," commissioned the making of "ane pig-full of ranker poysoune," which she sent to her stepson by his "nourrice." The nurse, unluckily for herself, "taistand of the samin, immediatlie thaireftir departit—" upon a farther errand. In connection with the machinations against the Lady Balnagowan, it is noteworthy that one of the charges contains the first recorded mention of that venerable and flowing-bearded excuse for the acquisition of poison—rats. The fallacious use of the word in this relation may have determined its value for modern slang. Lady Foulis was accused of giving eight shillings to a man of the congenial name of McGillieverie-dam "to pas to Elgyne *for bying rattoun poysoune.*" While the minor actors were suitably "convict and brunt," the leading lady was acquitted: her jury was composed of local burgesses and family dependants—a characteristic example of justice as administered under James the Just.

Very different was the treatment accorded in the following year to another gentlewoman, whose estate the good King coveted for one of his minions. Among the North Berwick "witches" socially the most remarkable was Euphame MacCalzean, daughter of Lord Cliftonhall, one of the Senators of the College of Justice. This lady was in June 1591 sentenced to be taken to the Castle Hill, "and thair bund to ane staik and brunt in assis, *quick*, to the death," for treasonably conspiring against

His Majesty's life by witchcraft;(*a*) but the "Dittay" against her contains another interesting charge: "Item, Indytit of airt and pairt of the poysouning of the said Patrik Moscrop, your husband, upon deidlie malice contractit aganis him, the fyrst yeir of your mariage, be gewing to him of poysoun, and cuist the rest thairof in the closett; quhairby his face, nek, handis and haill body brak out in reid spottis, quhilk poysoun wes expellit be his youth." Further attempts convinced Patrick that Scotland was no place for him, so he fled beyond "the seais" and spent the remainder of his days abroad.

In June 1596 the Master of Orkney was tried for conspiring to murder his brother Patrick, Earl of Orkney, by poison at a banquet in Kirkwall. Though King James personally insisted "in persuit" of the Master, and had the Crown witnesses, in order to confession, tortured with a ferocity which, as Mr. Pitcairn observes, "would disgrace the most barbarous tribe of Indians," the prosecution happily failed.(*b*) A similar result attended the trials, in October and November of the same year, of Alison Jollie in Fala, for poisoning a neighbour with whom she had quarrelled over "ane aiker of land,"(*c*) and of John Boyd, burgess of Edinburgh, for the "slauchter" of a woman by putting poison into the domestic meal-cupboard, on account of "ane deidlie rancour" conceived against her.(*d*) In November 1601 two men of Brechin named Bellie were banished the realm for mixing poison with dough, "and casting doune thairof in Jonet Clerkis zaird in Brechin for destructioune of fowlis, be the quhilk poysoune they distroyit to the said Jonet twa hennis."(*e*) Of a darker hue were the deeds for which in July 1605 William Rose of Dunskeith suffered doom.(*f*) This miscreant with the cooperation of his mistress, Marie Rannaldoche, frankly designed in the record "ane harlot," essayed to murder

(*a*) Pitcairn, i. 247–257.
(*b*) *Ibid.*, pp. 373–377.
(*c*) *Ibid.*, pp. 397–399.
(*d*) *Ibid.*, p. 399.
(*e*) *Ibid.*, ii. 336.
(*f*) *Ibid.*, pp. 481–484.

his wife with "poysonet and tressonabill drinkis," and failing in his purpose, "unmercifullie strangallit and wirreit" her in her bed. As, in addition to murder under trust, he was convicted of stouthrief or masterful theft, reset, adultery and other crimes, Rose must have been a very pretty villain.

No distinction appears then to have been drawn between the felonious administration of drugs to destroy life and the giving of them with curative intent. Thus, in November 1597, Christian Saidler in Blakhouse, "a wyise wyffe," who had successfully treated sundry patients by prescriptions obtained "frae ane Italean strangear callit Mr. Johnne Damiet,"(*a*) thereby effecting cures "quhilk be na naturall meanis of phisik or uther lawfull and Godlie wayes" could, in the judgment of the authorities, have been performed, was upon conviction "wirreit at ane staik" on the Castle Hill.(*b*) It seems hard that she should have suffered for the Crown lawyers' lack of faith. So too, in the case of Bartie Patersoune, "tasker in Newbottill," indicted in December 1607 for "ministring, under forme of medecine, of poysoneable drinkis," the alleged murder of two patients is charged along with the "cureing of James Broun in Turnydykis of ane unknawin disease," as also the treating of "his awin bairne" and of one Alexander Clerk, the remedy employed in each case being "watter brocht be him furth of the Loch callit the Dow-Loche, besyde Drumlanrig."(*c*) Upon this point a further illustration of what was legally held to constitute the crime of poisoning is afforded by the case of Issobell Haldane in May 1623, charged with bringing water from the Well of Ruthven, of which she "had gewin drinkis to cure bairneis," one of whom, notwithstanding, died. For these charitable acts she was "brunt" at Perth as a warning to sick-nurses in general.(*d*)

(*a*) Jehan Damyte, the French or Italian priest and wizard who warned Rizzio of his danger.

(*b*) Pitcairn, pp. 25–29.

(*c*) *Ibid.*, ii. 535, 536.

(*d*) *Ibid.*, pp. 537, 538.

In November 1609 James Mure of Monyhagen was "dilaitit" for having given to Margaret Wicht in Dalmellington "ane Inchantit drink."(*a*) This person, a kinsman of the celebrated John Mure of Auchindrayne, "maist willinglie" offering himself to trial, "disassenting fra all continuatioun," and alleging that the charge was "bot maliciouslie inventit aganis him be the said Margaret for hir awin previe advantage"—a defence worthy of his redoubtable relative—was discharged owing to the non-appearance of the "Persewar." Perhaps, knowing the family, the lady thought it more prudent not to press the matter: the Mures were ill folk to go to law with.

Leaving these nebulous and fantastic charges we reach solid criminal ground in the case of the Erskines in December 1613. Robert, Helen, Isobel and Anna, brother and sisters, were branches of the godly tree whereof Mr. John Erskine of Dun had been the stalwart trunk. That inveterate Reformer, surviving till 1591, devoted, we are told, his declining years to the moral and religious welfare of his many descendants. Robert and his sisters were probably then too young to profit by the good man's precepts; but if they were a fair sample of the stock, he had his work cut out for him. Their brother David, the last laird of Dun, died leaving two children, on whose behalf the property was administered by a tutor, an office to which the uncle Robert thought himself entitled—doubtless a long minority would present opportunity for pickings. But apart from this grievance, his sisters urged upon him the hardship of being kept out of a fair estate by the survivance of their little nephews. Beyond credibility as it seems, repeated family counsels were held within their house of Logie as to the best way of expediting Robert's succession. The sisters—who might claim kinship with their resolute countrywoman, Lady Macbeth—finding it difficult to screw their less bloodthirsty brother's courage to the sticking-place, approached one

(*a*) Pitcairn, iii. 68, 69.

David Blewhouse with a proposal that if he could contrive "be sum sinisterous meanis" the extinction of the two young lives standing between Robert and the estate, he should receive part of the lands and five hundred merks in silver. Subsequently Robert himself called upon Blewhouse to homologate the offer, but that gentleman declined to treat. Thereupon the sisters set out one summer evening from the place of Logie, and passing over Cairn-o'-Mount towards Muir alehouse, took counsel with a wise woman, Janet Irving by name, reputed "ane abuser of the people." From this sibyl they obtained "ane grit quantitie of herbis" which, with instructions for use, they carried home to Logie. Robert, sceptical as to the potency of the herbs, personally interviewed the sorceress, who satisfied him that they were "forceable aneuch" for his purpose. So as directed they were steeped in ale for a long space, and the resultant brew was taken by the family party to Montrose, where the children were then living with their mother. After drinking this beverage both boys were seized with pain and violent vomiting, to which the elder presently succumbed, exclaiming with his ultimate breath, and a grasp of the situation beyond his years: "Wo is me, that I evir had richt of successioun to ony landis or leving! ffor gif I had bene borne sum pure coitteris sone, I had nocht bene sa demanet [treated], nor sic wikket practizes had bene plottit aganis me for my landis." Only less immediately fatal was the condition of the younger boy, "off quhais lyfe," says the indictment, "thair is na hoip." This monstrous and sordid crime was fortunately too clumsy to escape detection, so the uncle and aunts were forthwith apprehended. Robert was tried first in December 1613, and having avouched the deed, was beheaded at the Mercat Cross of Edinburgh.(*a*) His sisters, denying their guilt, were in the following June convicted upon his confession and on the direct evidence of Blewhouse and others. Isobel and Anna shared their brother's doom;

(*a*) Pitcairn, iii. 260–264.

Helen, "being moir penitent, thogh less giltie, than the rest," had her sentence commuted to banishment for life.(*a*) The whole horrid business forms an instructive comment on the state of Scots society in the golden days of "gentle King Jamie."

Hitherto we have walked in the light of the admirable Pitcairn, whose research has done so much to make plain the way of the student of early Scottish crime. Sir Walter Scott wrote in the *Quarterly Review* for February 1831 an article warmly appreciative of "his patient and enduring toil," but these labours, unfortunately for us, were carried no further than the year 1624; and for subsequent cases, other than such as are separately reported, until we reach the first series of the official Justiciary Reports beginning in 1826, we must rely on those respectively noticed in the treatises of Burnett and Hume, and included in the collections of Maclaurin and Arnot. The Proceedings of the Justiciary Court from 1661 to 1678, published by the Scottish History Society, are so barren in detail as to yield little to the present purpose. The only grain I have been able to glean from them is the case in May 1665 of Margaret Hamilton, relict of Robert Bedford, merchant in Leith, for the murder of her husband, an Englishman, inspired by an intrigue with his friend, a local surveyor. This lady "employed a servant to buy poison," but being, as appears, of an impetuous habit, she anticipated its action "with the canon bullet that she used for breaking of her coalls," accounting afterwards for the deceased's injuries by a pretended fall down stairs. She was very properly beheaded.(*b*)

From the inadequate data furnished by these early cases it is impossible to tell the nature of the toxic substances employed, while the common conjunction of poisoning and sorcery does not tend to enlightenment; but such indications as there are point to the poisons formerly classed as vegetable. We now come to the first recorded Scottish

(*a*) Pitcairn, pp. 266–269. (*b*) *Justiciary Records*, i. 125, 126.

case in which the poison used is definitely stated: that of John Dick and Janet Alexander, his spouse, convicted in March 1649 of the murder of his brother and sister by poisoning them with arsenic, administered in a loaf or bannock.(*a*) It is to be noted that, so curiously conservative is the criminal mind, this irritant has since continued the standard medium in homicidal poisoning. That it was early and widely recognised as such in other times and countries appears from its adoption by the classic school of Greek and Latin poisoners. Arsenic was the favourite specific of the Borgias, the famed Aqua Toffana consisted of a solution of arsenic, and to arsenic Madame de Brinvilliers owed her dreadful power. Its deadly properties were well known; it was readily obtainable and as easily administered; and, until in 1836 Marsh discovered his test, there was no certain method for its detection.(*b*)

An interesting case, disclosing unusual originality of design, in which death was caused by the excessive administration of drugs not in their nature poisonous, was tried in January 1676.(*c*) Two menservants, John Ramsay and George Clerk, were charged with the murder of their master, John Anderson, merchant in Edinburgh, an old bachelor, wealthy and infirm, with none to care for him but his hired attendants, who basely abused their trust by repeatedly robbing him when they had lulled his vigilance with liquor. The season was "very sickly"—dysentery raged in the town; there were many deaths, and the stricken were ignorantly shunned for fear of infection. To these wicked servants the idea occurred of counterfeiting by medicine the symptoms of the disease in their master. For this purpose they consulted in the King's Park a lad named Kennedy, an apothecary's apprentice, whom they induced to supply them with certain purgatives, which

(*a*) Burnett's *Criminal Law*, p. 9; Hume's *Commentaries*, 1819, i. 284.

(*b*) Those curious in the poisons of the ancients may consult *Edinburgh Medical Journal*, xxxiii. 315.

(*c*) Arnot's *Criminal Trials*, 1785, pp. 142–145; Burnett, p. 9; Hume, i. 285.

speedily produced the desired result. The old man called in his own physician, who treated him for the common disorder. From Kennedy they also obtained syrup of poppy, which they mixed with their master's drink, and when he was unconscious, rifled his repositories of money and jewels. They next gave him "powder of jalap and crystal of tartar" to counteract the effects of his doctor's prescriptions. But whether by the efficacy of these, or by the strength of his constitution, the old gentleman began to mend; so the murderers sought from Kennedy a more potent drug. This the apprentice refused to give them, "saying that the body would swell, and they would be discovered"; but he advised an increased exhibition of jalap, which they accordingly mixed in a conserve of roses prepared by the patient's own apothecary. So soon as they perceived that the end was near they secured the residue of his valuables, and "called in the neighbours to see him die." Ramsay and Clerk were convicted and, confessing their guilt, were hanged at the Cross; Kennedy, who had furnished the drugs and shared the spoils, was in the following February indicted as art and part in the crime. It was ingeniously objected for him to the relevancy of the charge that the Act 1450 on which he was tried applied only to poisonous drugs, not to such as were given medicinally and were not intrinsically noxious. The point was never judicially determined, for before judgment Kennedy was upon his own petition banished for life; but Sir George Mackenzie in discussing the question observes: "The best of Druggs, given in great excess, is Poyson; for Poyson consists in excess of quantity as well as quality, and whatever overpowers our nature is poysonable to us."(*a*) The only similar case I have encountered is that of William Paterson, tried in February 1815 for the murder of his wife by repeated doses of sulphur, calomel, tartar emetic, jalap, castor-oil and other purgatives. At the trial, a surgeon

(*a*) *Laws and Customs of Scotland in Matters Criminal*, tit. viii.

swore that he was asked by the husband for such drugs to dispatch the wife, and when these were refused with the remark that this was tantamount to murder, Paterson replied, "No; it was only helping her awa"! He was acquitted by a majority of one; but his neighbours, taking a different view of the facts, well-nigh lynched him on his return home.(*a*)

The attempt and not the deed, which confounded Lady Macbeth, also caused some confusion in practice as regards its proper penalty. Thus in the case of David Hay and Dr. Thomson, March 1692, in which an attempt to poison with laudanum was charged along with the actual murder of Hay's wife, the doctor who had supplied the drug was convicted of art and part. Both were sentenced to be hanged, and to have their heads cut off and affixed to the jail of Lanark.(*b*) In the case of Dr. Elliot and others in January 1694, where the charge was "the designing to use, and the use-making and buying of poyson," coupled with a malignant conspiracy to fix the like crime on two innocent persons, the accused were sentenced to death.(*c*) When, on the other hand, in January 1728, Walter Buchanan of Balquhan was charged with two attempts to destroy Jean Dougal, Lady Branshogel, liferentrix of part of his estate, by giving poison to an unwitting third party to administer to her, the Court found the libel relevant to infer only an arbitrary punishment.(*d*) The same course was followed on the trial of Janet Ronald in May 1763, for an attempt to poison her sister by mixing with her food verdigris, of which by the timely use of antidotes she recovered.(*e*) Since the Act 10 George IV. c. 38, however, the attempted administration of poison with intent to injure or destroy life is a capital offence.

(*a*) Hume, i. 285; ii. 318.

(*b*) Burnett, pp. 8, 10; Hume, i. 175, 269.

(*c*) Burnett, p. 10; Hume, i. 167, 175.

(*d*) Burnett, p. 10; Hume, i. 176.

(*e*) Maclaurin's *Criminal Cases*, pp. 211–249; Burnett, pp. 9, 10; Hume, ii. 399.

The case of Dr. Elliot above cited calls, on account of its unusual features, for more than passing mention. Daniel Nicolson, an Edinburgh writer, had a mistress named Marion Maxwell, and with the view of regularising their connection, he proposed to rid himself of his lawful spouse. For this purpose the pair "seduced" Dr. John Elliot to furnish them with the necessary drugs, which were supplied accordingly by that venal physician. Some difficulty was experienced in administering these, so the parties formed an elaborate and complicated plot for the judicial destruction of Mrs. Nicolson and her sister, Margaret Sands, by fixing on them a design to poison her husband. In pursuance of this scheme Nicolson waited upon the Lord Advocate, Sir James Stewart, to complain that his life was in danger from his wife and sister-in-law, who he said had conceived a groundless suspicion of his infidelity with Maxwell; that they had applied for poison to Dr. Elliot, who, being filled with horror at such a proposal, informed the intended victim; and asking his lordship's guidance in this painful predicament. Summoned before the Lord Advocate, the doctor confirmed the tale, adding that so anxious were the ladies to obtain poison, they would not hesitate to give a receipt for it in any terms he might suggest. His lordship authorised Elliot to supply what was wanted and to take a receipt therefor, intending to secure the poison when in Mrs. Nicolson's possession. The conspirators then placed poison in her repositories, where it was duly "discovered" by the Crown officials. Dr. Elliot next produced a receipt in the required form, bearing to be granted by the wife and her sister, who were forthwith apprehended. But public opinion was less blind than Justice; when the story got abroad the known character and conduct of Nicolson and Maxwell and the professional repute of their medical adviser, raised suspicions which in the end led to the unmasking of the plotters. The doctor, under re-examination, collapsed and confessed; and the three malefactors were brought to the bar, charged with

forgery, conspiracy, and attempt to poison. The legal objection to Mrs. Nicolson giving evidence against her own husband was ingeniously surmounted by taking her testimony on oath before the Lord Advocate, the Sheriff, and the Clerk of the Privy Council, and producing her deposition at the trial! His lordship's handling of this case goes some way to explain his popular nickname, "Wily Jamie." All three prisoners were convicted and suffered the extreme penalty.

Resuming our chronological survey we find arsenic playing the leading part in a series of cases the first of which, that of William Bisset and Jean Currier, is of June 1705.(*a*) Jean, Bisset's mistress, bought from an apothecary in Dundee "an ounce of arsenic unprepared," on pretence of killing a dog, and gave it to Bisset, who administered it to his wife by the hand of their maidservant, as a medicine which her doctor had prescribed. The verdict "finds that the powder found in the defunct's stomach, Mary Murray, was the occasion of her death." Although Currier was accessory to, and was indeed the instigator of the crime, and both were convicted, their sentence was merely whipping, the pillory, and banishment.

An interesting departure from the standardized methods of crime occurs in November 1720 in the case of Nicol Muschet, a villain whose name is familiar to readers of *The Heart of Midlothian.*(*b*) Before slaying his wife in the King's Park, as commemorated by his cairn, Muschet and his associates made repeated attempts to destroy her by poisoning and other more violent means, from which her amazing immunity might, but for the sequel, lead one to think the lady bore a charmed life. Burnbank, Muschet's infamous friend and adviser, recommended corrosive sublimate as "far less dangerous to meddle with than arsenic, on account arsenic both swelled and

(*a*) Burnett, pp. 9, 268 ; Hume, i. 270, 276 ; ii. 370.

(*b*) *Criminal Trials Illustrative of the Tale entitled* "The Heart of Mid-Lothian," 1818, pp. 323–344 ; Maclaurin's *Criminal Cases*, pp. 738–741.

discoloured," and quantities of that poison were from time to time administered to the unhappy woman in the sugar she was in the habit of taking with her "dram." As she recovered from the illness thus induced, it was decided to increase the doses, so the conspirators put the poison into a nutmeg-grater, from which they conveyed it into her brandy and ale. But though afterwards the grater looked "as if it had been burnt in the fire, by reason of the corrosive mercury," the patient still survived, and physical force had finally to be employed to terminate her miserable existence. Muschet was sentenced to be hanged and his body hung in chains to the terror and example of others, a penalty reserved for crimes of singular wickedness.

In the case of Nicolas Cockburn in August 1754,(*a*) a wife was charged with the murder of her husband and stepmother by putting arsenic respectively into their kail (broth) and porridge, to disappoint a beneficial settlement in favour of the mother as a widow. In the husband's case there was no sufficient proof; but on a post-mortem examination of the mother, the surgeons detected in the stomach "a whitish powder resembling arsenic," some of which was also discovered in the bottom of a vessel used by the deceased for food. A paper containing a similar powder, ascertained on analysis to be arsenic, was found in the prisoner's chest. Dundas of Arniston, the future Lord President, who as Justice of the Peace had taken the woman's dying declaration, deponed to her grounds of belief that her stepdaughter had poisoned her. The verdict was Guilty. In Andrew Wilson's case in August 1755 a man bought arsenic "for rats."(*b*) He was seen to put something from a paper into a mug of ale, out of which his wife drank and shortly thereafter died with the usual symptoms of poisoning. She expressed strong suspicion against her husband. A white powder, which was neither analysed nor preserved, was noticed in the mug and tasted by a witness, who presently suffered from vomiting, etc.

(*a*) Burnett, pp. 9, 544; Hume, ii. 392. (*b*) Burnett, pp. 9, 545.

No medical man attended the deceased, nor was the body opened, and no arsenic was found in possession of the prisoner, who absconded. He was brought back, and convicted on trial. The motive alleged for the crime was the marrying of a younger woman. Like Muschet, Wilson was condemned to be hung in chains. In two Inverness cases, M'Coiler in September 1757,(*a*) and M'Kenzie in 1760,(*b*) where the poisons employed were respectively laudanum and arsenic, the accused were acquitted.

The curious laxity which then obtained in regard to medical evidence as to the cause of death, and the existence of any poison in the body of the deceased, is nowhere perhaps more strikingly apparent than in the remarkable case of Katharine Nairn in August 1765.(*c*) I have often wondered why no enterprising novelist has laid hands upon her story, such is the effective quality of the facts, so nice the question of a just apportionment of the relative guilt and innocence. "Readers of Mr. J. A. Symond's book on the Renaissance," wrote Andrew Lang once, "hold up obtesting hands at the rich and varied iniquities of the Courts of mediæval Italy. But for complex and variegated depravity the family of Mr. Ogilvy of Eastmiln could give the Baglioni and other Italian miscreants a stroke a hole—whatever view you take of the case." Katharine, daughter of Sir Thomas Nairn of Dunsinnan, married at nineteen, on 30th January 1765, Thomas Ogilvy, laird of Eastmiln of Glenisla, in Angus, a gentleman in failing health and more than double her age. There lived with them his venerable mother and younger brother, Patrick, a lieutenant invalided home from the East Indies. Alexander, the youngest of the three brothers, was a dissipated surgeon in Edinburgh, on bad terms with his family. A month after the wedding there arrived from that city Miss Anne Clark, a cousin of the Ogilvys, who was, though unknown

(*a*) Burnett, p. 10. (*b*) *Ibid.*

(*c*) *Trial of Katharine Nairn and Patrick Ogilvie for the Crimes of Incest and Murder*, Edinburgh, 1765 ; *Twelve Scots Trials*, 1913, pp. 106–135.

to her relatives at Eastmiln, a woman of flagitious life, of evil disposition, and Alexander's mistress. He sent her ostensibly to make his peace, but really to work what mischief she could; failing his delicate brethren he was next heir to the property. The first-fruits of her mission were divers rumours regarding the relations of the bride with the young lieutenant, but neither the husband nor the mother paid much heed to their guest's scandalous whispers. The two brothers, however, quarrelled over money matters; the laird referred to Anne's reports, and Patrick, indignantly denying their truth, left the house, refusing to return though pressed by Thomas to do so. Katharine, whose health was then indifferent—she was in prospect of becoming a mother—asked Patrick to send her some salts and laudanum which he had in his sea-chest at Alyth; and having got the drugs he sent them to Eastmiln by Andrew Stewart, his sister's husband, who delivered them to Katharine. Anne then informed the other members of the family that Katharine had told her she meant to poison her husband, and she (Anne), to put her off, had herself promised to procure poison from Edinburgh, but that Patrick had now supplied it. None of them believed her "horrible tale," and no action was taken. Next day, 6th June, the laird, whose ailments had been increasing, became seriously ill, with symptoms of acute gastric inflammation, and a doctor was summoned but arrived too late; Thomas Ogilvy was dead. Five days later, on that fixed for the funeral, Alexander came post from Edinburgh, sensationally stopped the burial on the ground that his brother had been poisoned, lodged with the authorities an information upon which Katharine and Patrick were apprehended, and assisted by Miss Clark—who after the death had been dismissed by Katharine—entered into possession of the estate. On their trial at Edinburgh on 5th August for the crimes of incest and murder, the evidence relating to the two charges was, wilfully or not, confused; the intrigue, as appears, being inferred from the poisoning,

and the poisoning assumed from the intrigue. The proof occupied forty-three consecutive hours, but of upwards of a hundred witnesses for the defence only ten were examined, owing to the undisguised impatience of the jury. To establish the first charge, the prosecutor relied mainly on the infragrant testimony of Miss Clark—than whom in such a connection no witness could have been more competent—and on that of a servant girl who had been dismissed by Katharine for theft and had sworn revenge. As regards the second charge, strangely enough, it was neither proved that the deceased died of poison, nor that his wife had the means of poisoning him were she "so dispoged." The medical evidence as to the cause of death was quite inconclusive—though three surgeons inspected the body, a post-mortem had been prevented by Alexander—but the awkward fact that Patrick, shortly before the death, did buy half an ounce of arsenic, "in order to destroy some dogs that spoiled the game," was clearly proved. The prisoners having been found guilty on both counts, Katharine, in the picturesque language of the time, "pled her belly" in arrest of judgment, and sentence was in her case delayed. The conduct and result of the trial was widely and adversely criticised, and efforts were made to have the verdict reviewed by the House of Lords, but this was found to be incompetent. After four several respites Patrick, protesting his innocence, was hanged in the Grassmarket. Meanwhile Katharine in the Tolbooth had given birth to a daughter, who did not long survive. The night before she was to appear for judgment, having changed clothes with the midwife, she escaped from the prison. Her uncle, William Nairn, an Edinburgh advocate, later raised to the Bench as Lord Dunsinnan, doubtless knew something of his niece's flight from justice, for his clerk accompanied her in a post-chaise to England, whence she safely reached the Continent. She is said to have entered a French convent, dying in the end full of years and grace. Alexander did not long enjoy his good fortune; presently he was banished for bigamy,

but being allowed some time to settle his affairs, met a violent death by a fall from a window. Anne Clark, however, survived, retaining in her experienced bosom the secrets of the house of Eastmiln.

Not every jury was so eager to convict as that which sent Patrick Ogilvy to the gallows. On the trial at Glasgow of Jean Semple in May 1773 for poisoning her husband with arsenic, no less than fifteen grains of that substance were found in the deceased's stomach.(*a*) "The usual experiments," we read, "were made on it by hot iron, and part of it was given to a chicken, which died soon after." But this failed to convince the jury, who returned a verdict of Not Proven. Even more curious was the scepticism shown by an Aberdeen jury on the trial of Ann Inglis in 1795.(*b*) In the homely household of a young farmer, named Patrick Pirie, this woman combined the offices of cook and concubine, but her master, desirous of ranging himself, announced his intention to marry another. This was deeply resented by his lady-help, who was heard to make the ominous remark that "there would be a burial before a bridal." Shortly before the wedding, Pirie, a hale man of thirty-two, who had never had a day's illness, after taking a draught of ale from the hands of Ann, was seized with violent vomiting and internal pain; he was attended by a doctor, but died in nine days, declaring his belief that his servant-mistress had poisoned him. A post-mortem disclosed "much inflammation in the stomach, the inner coat of which was corroded and separated from the adjoining one." No poison was detected in the body, but the surgeons deponed that the appearances were such as might have been produced by sulphate of copper or blue vitriol. A search of Ann's chest brought to light a parcel of that poison, which she said she had bought as a cure for toothache, though she was never known to suffer from that ailment. The verdict of Not Guilty must have surprised

(*a*) Burnett, p. 584.

(*b*) *Ibid.*, pp. 9, 393, 547; *Black Kalendar of Aberdeen*, 1854, pp. 139, 140.

her as much as it did the prosecutor. Strangely enough, another instance of the use of similar means occurred at Aberdeen in 1830,(*a*) jealousy being also the motive of the crime, where Catherine Humphrey, having quarrelled with her husband about another woman, poured oil of vitriol into his open mouth as he lay asleep. She was convicted and hanged. This, too, was the poison employed by Barbara Malcolm to destroy her own child, for which she was condemned in January 1808.(*b*)

Such toxicological vagaries are rare; arsenic resumes its rightful place in the case of Matthew Hay, convicted at Ayr in September 1780(*c*) of poisoning and attempting to poison a whole family. Hay had seduced one of the daughters, and to prevent discovery he did not hesitate to sacrifice, not only the girl herself, but her father, mother and sisters—five lives in all. The parents, however, alone succumbed; the others, after severe sufferings, recovered. Hay, having bought arsenic "for killing rats," called one day on his victim and found her boiling sowens for the domestic meal. He sent her out to get him a drink, and during her absence threw some of the arsenic into the pot and the rest into the seed barrel. All who ate of the food were seized with the usual symptoms of arsenical poisoning, and the father and mother died that night. On a post-mortem examination of the bodies no arsenic was found, but Dr. Black, the eminent chemist, discovered that substance mixed with the sowens and seed; so Hay was, happily, hanged. It is interesting to note that it was upon this trial that Lord Kames made from the bench the judicial joke about "check-mate," which Lockhart in his *Life of Scott* fathered upon Lord Braxfield; also that the counsel for the defence, not the prisoner himself, was his lordship's old opponent at chess.(*d*)

(*a*) *Black Kalendar of Aberdeen*, pp. 207-209; *Edinburgh Medical Journal*, xxxv. 298–316. (*b*) Burnett, pp. 9, 549.

(*c*) *Ibid.*, pp. 9, 11, 546; Hume, i. 284; ii. 69.

(*d*) Hill Burton's *Narratives from Criminal Trials in Scotland*, ii. 64, 65, n.

In the case of Marshall, on the Autumn Circuit at Perth in 1796, the accused's wife died without suspicion of foul play, which did not arise until two months thereafter, when the body was exhumed and three grains of arsenic were found in the stomach. The prisoner was convicted.(*a*) At Aberdeen, in 1797, a man named Stewart was found guilty of an attempt to poison by administering arsenic in a ball of oatmeal.(*b*) In 1800, at Glasgow, one Lockhart and his servant-maid were charged with the murder of Lockhart's wife.(*c*) No medical man attended the deceased and there was no evidence of the cause of death. It was proved that the husband had bought upon false pretences a large quantity of laudanum, but the body was not opened until a fortnight after death, when the physicians were of opinion that even had laudanum been administered, it could not have been discovered. The accused were acquitted. At Ayr, in April 1810, John M'Millan, from Wigtownshire, was convicted of poisoning with corrosive sublimate Barbara M'Kinnel, a girl who was with child to him.(*d*)

As we advance into the nineteenth century the field of our investigation, whether by the greater prevalence of poisoning or by the improved methods available for its detection, so largely widens that in the space at my disposal I am able to deal only with the more interesting examples. The crime for which, at Aberdeen, in October 1821, George Thom was brought to book, presents, both as regards manner of perpetration and comprehensiveness of scope, points of resemblance to that of Matthew Hay previously cited.(*e*) A well-to-do-farmer, who for sixty-one years had enjoyed a high reputation for piety and worth, Thom married his second wife Jean Mitchell, whose brothers and sisters lived at Burnside, a farm in the parish of Keig. By the death of a relation the Mitchells succeeded to a considerable fortune, but the fifth share falling to Mrs. Thom seemed to

(*a*) Burnett, pp. 9, 548. (*b*) *Ibid.*, pp. 9, 11, 584.
(*c*) *Ibid.*, pp. 9, 549. (*d*) *Ibid.*, p. 10.
(*e*) *Black Kalendar of Aberdeen*, pp. 173–180; *Edinburgh Medical Journal*, xviii. 167.

her spouse a very inadequate provision, and it was obvious that the death of the other legatees would substantially increase their sister's portion. With a view, therefore, to accelerate her succession he called at Burnside on the eve of the local "Sacramental Sunday," and announced his intention to stay the night. After a friendly supper the visitor asked leave to sleep in the kitchen, but this his host would not permit, and he was installed in the best bedroom. In the small hours of the Sunday morning one of the brothers, from his box-bed in the kitchen, heard somebody moving about the cupboard, but did not trouble to open the shutter of his insalutary cubicle to see who was astir so early. When the family met for breakfast, Thom, hospitably pressed to share the meal, declined on the plea that he must be off before folks were going to the kirk: it would never do for one of his godly walk and conversation to be seen abroad upon the Sabbath day. So, wishing his relatives a kind farewell, the worthy man set forth. On his way home he ate at Mains of Cluny a hearty breakfast, though he said he had been very bad at Burnside after something he had eaten there, and that but for his promptitude in inducing sickness with a crow's feather, he would not have lived to tell the tale. Breakfast at Burnside was a simple meal, consisting of porridge, eaten, in the good Scots fashion, with salt instead of sugar. That morning one of the brothers thought it had "sweet, sickening taste," the others noticed nothing amiss. Presently all of them became unwell; the sisters stayed at home, but the brothers struggled to church. James had to go out during the service, as he "felt himself turning blind"; he found William in the kirkyard, very sick. All four were for some time seriously ill but three recovered, William alone dying within the week. They were attended by a doctor, who seems at first to have had no suspicions. It appears that from a queer sort of family pride the survivors wished to hush up the incident; a post-mortem examination, however, was made, and three surgeons "concurred in opinion that the deceased had died by means

of some deleterious substance taken into the stomach." From the beginning the Mitchells had suspected their brother-in-law, and when Thom, uninvited, came with cynical audacity to the funeral, his presence was forbidden — he "had done ill enough there already." Told that William had been poisoned, he made the rather inept suggestion that "poison might have been got in the burn from puddocks," to which Helen Mitchell dryly replied that there were no puddocks in the porridge, whereupon Thom took his departure. He was later arrested, tried for murder, found guilty, and sentenced to death. No arsenic was traced to his possession, but an attempt to buy it "to poison rats" was proved by an Aberdeen apothecary. After conviction, Thom earnestly maintained his innocence, but despite edifying behaviour in prison he attempted to get his son to supply him with poison. Finally, the game being up, he confessed that he had mixed arsenic with the salt, not with the meal as had been assumed at the trial.(*a*) When the execution was over, "the body was subjected to a series of galvanic experiments of which a particular account was afterwards published"—a shocking business in more senses than one.

At Glasgow, in April 1822, Helen Rennie, a domestic servant, was charged with the murder of her illegitimate child.(*b*) The mother being in service, the little boy was boarded with another woman. One day Rennie called for him and took him away for some hours; he was then in perfect health, but when brought back seemed very ill. She explained that she had given him "some brimstone for the hives." The foster-mother sent for a doctor, who found the child dying. A post-mortem was held, when "two teaspoonfulls" of king's yellow (sulphuret of arsenic) were discovered in the stomach. There was no indication that the child had suffered from hives. Rennie declared

(*a*) Such also was the device of the gatekeeper Misard, in *La Bête Humaine* of Zola.

(*b*) *Edinburgh Evening Courant*, 25th April 1822.

that she had bought a half-pennyworth of sulphur, and at her trial a druggist's apprentice (who recalls the assistant of the chemist juryman in *Bardell* v. *Pickwick*) deponed that the sulphur and king's yellow were kept respectively in a drawer and in a bottle; he did not recollect having served the prisoner, but was sure he never sold to anyone a half-pennyworth of king's yellow. For the defence, two doctors stated that by an unskilled eye king's yellow might be mistaken for sulphur. The verdict was, by a majority, Not Guilty, the judge, in discharging the prisoner, remarking that he would have voted with the minority.

The criminal records of 1827 are notable for the occurrence of several important poisoning cases, of which the first is that of Mary Elder or Smith in February of that year.(*a*) She was the wife of a respectable farmer at West Denside, near Dundee. Among the women employed at the farm was a girl named Margaret Warden, who had engaged the affections of Mrs. Smith's youngest son, a fact which, when discovered by the mother, in view of a previous lapse on the girl's part, that lady bitterly resented. She dismissed Margaret with ignominy; but fearing she was *enceinte*, afterwards induced her to return for the avowed purpose of attempting by illegal means to avert the threatened scandal. Accordingly, with the girl's consent, Mrs. Smith gave her sundry doses, particularly, in presence of Jean Norrie, a fellow-servant, "something in a dram glass" that looked like cream of tartar, with the result that Margaret grew gravely ill, her symptoms being those of arsenical poisoning. A doctor, brought by the girl's mother who had learned of her state, thought she was dying of cholera, which was then rife in the district. Margaret, however, expressed both to her mother and to Norrie suspicion of foul play on the part of her mistress. "Ye ken wha is the occasion o' me lyin' here?" were her

(*a*) Syme's Justiciary Reports, p. 71; *Account of the Medical Evidence in the Case of Mrs. Smith.* By R. Christison, M.D., *Edinburgh Medical Journal*, xxvii. 141; xxviii. 84, 94; *Twelve Scots Trials*, pp. 160–190.

last words; "but they'll get their reward. My mistress gave me . . . " but death cut short the sentence. So far as human retribution was concerned Margaret, as we shall see, was not inspired. The girl died and was buried; but somebody talked, so the body was exhumed and examined by three surgeons; on a subsequent analysis the presence of oxide of arsenic was unequivocally detected, and Mrs. Smith was apprehended on the charge of murder. In her declaration before the Sheriff she denied having known of the dead girl's condition, and said she had given her nothing except a dose of castor-oil, and that she (declarant) got no drugs from any person on the Friday preceding the death. All these statements were at the trial proved to be false. In particular, Dr. Dick of Dundee stated that the prisoner, whom he had known for many years, did on the day in question apply to him for "poison for rats"; he gave her an ounce and a half of arsenic in a packet marked "Arsenic—Poison," warning her at the same time to be very careful how she used it. Jeffrey and Cockburn conducted the defence, which rested on two disparate bases—cholera and suicide. The opinion of the Crown experts, including that of Dr. Christison who had made an independent analysis, that the death was due to arsenic, remained unshaken; and Dr. Mackintosh, physician in Edinburgh, called to maintain the theory of death from natural causes, was utterly routed by the Lord Advocate on cross-examination. It would seem that to the evidence of this skilled witness the following amusing extract from Dr. Christison's autobiography refers:

> In a trial for poisoning with arsenic—the last occasion on which an attempt was made to dispute the validity of the chemical evidence in arsenical poisoning—Dr. . . . was employed to make a muddle of the professional testimony; and this was how he set about it. The proof, from symptoms during life and morbid appearances after death—apart from irrefragable chemical proof of the presence of arsenic in the stomach—was unusually strong, perhaps singly conclusive. But Dr. . . . had no difficulties. "He had great experience of disease. Vast experience in pathological dissections. There was nothing in the symptoms of the

deceased during her life which he had not seen again and again arising from natural disease: nothing in the appearances in the dead body which he had not seen twenty times as arising from natural causes." "But, Dr. . . . ," said the Lord Advocate, "the symptoms you have heard detailed, and which you say may have arisen from natural disease, are also such as arsenic may produce, are they not?" "They may be all produced by natural disease." "So you have already told us. But may they not also be produced by arsenic?" "They may; but natural disease may equally cause them." "You need not repeat that information, Doctor. Give me a simple answer to my simple question: May these symptoms be produced by arsenic? Yea or Nay?" "Yes." "Now, Dr. . . . , you have also told us that the appearances found after death were such as natural disease may produce. Are they not also such as may be produced by arsenic?" "Natural causes may account for them all," etc. etc., through the same round of fencing, until he was compelled to admit that arsenic might produce them. "Now, Doctor," continued the Lord Advocate, "you have heard the evidence of arsenic having been found in the stomach of the woman. Are you satisfied that arsenic was discovered there?" "My Lord, I am no judge of chemical evidence." "Then, Dr. . . . , in that case I must tell you that it will be my duty to represent to the jury and judges that arsenic was unequivocally detected; and I ask you this—Suppose arsenic was detected, what in that case do you think was the cause of these symptoms, and of these signs in the dead body?" "Natural disease might cause them all." "Yes! Yes! we all know that. But suppose that arsenic was found in the stomach, what then would be your opinion as to their cause?" A pause on the part of the Doctor, now run to earth. "Do you not think, sir, that in that case arsenic was the cause?" Softly and reluctantly came the inevitable answer, "Yes." "One more question, then, and I have done: In your opinion, did this person die of poisoning with arsenic?" "Yes." "Have you any doubt of it?" "No." "Then" (*sotto voce*, yet audibly enough), "what the devil brought you here?" (*a*)

This instructive passage is in the official report reduced to a couple of lines.

There was thus no contesting the fact that the girl died of arsenic, and an attempt to show that she had committed suicide broke down; nor was Jeffrey more successful in seeking to have the prisoner's declaration set aside on the ground that at the time of making it she was unfit to be examined. Yet, after a trial lasting twenty-two hours,

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(*a*) *Life of Sir Robert Christison*, i. 286–288.

the jury returned a unanimous verdict of Not Proven, and the prisoner was discharged. Cockburn admits his client's guilt.(*a*) It seems that she had at first meant only to procure abortion, but—*facilis descensus*—was led on to employ the more radical remedy of murder. Sir Walter Scott has recorded his impressions of the trial, which he attended.(*b*)

A case of peculiar atrocity, exceeding in cold-blooded wickedness even that which we have just considered, was tried at Perth in April of the same year.(*c*) Two sisters, Margaret and Jean Wishart, kept house together in the High Street of Arbroath, supporting themselves by taking boarders. The younger, Jean, was totally blind and quite dependent on her sister. A young man named Andrew Roy, a wright or carpenter, had lodged with them for five years. He was, as appears, originally the blind girl's lover, and she had borne him a child, which died; afterwards Margaret secured his affections, but later he returned to his first love—which indicates in the words of the Lord Justice-Clerk at the trial, "the most abominable footing on which they were." The discovery by Margaret that Jean was about to become again a mother aroused in her, to quote the same authority, a "fiend-like jealousy," and she determined at all costs to remove her rival. On Tuesday, 3rd October 1826, Margaret gave Jean, who was then in bed expecting shortly to be confined, her supper of porridge, in presence of a neighbour and one of the boarders. No one but Jean ate of it. Twenty minutes after taking it she was seized with sickness and other painful symptoms. Next day she continued very ill, and on Friday gave birth to a child, when Margaret was reluctantly forced to summon a midwife. Jean begged her sister to send for a doctor, a course also repeatedly urged upon her by divers sympathetic matrons, but Margaret replied "that everything had been

(*a*) *Circuit Journeys*, p. 12. (*b*) *Journal*, i. 355, 361.

(*c*) Syme's Justiciary Reports, Appendix No. I.; *Edinburgh Medical Journal*, xxix. 18.

done that could be done; that a doctor would do no good, and that she was not able to pay one." The gruel which, during the illness, was given both to mother and child, was prepared by her alone, and she showed throughout complete apathy and indifference as to their sufferings. Jean died on Sunday morning, and as it was obvious that the child too was dying, with similar symptoms, one of the neighbours "brought in a doctor from the street." He said he could do nothing, and being asked by Margaret—an excellent ruse—to look at the dead body of her sister, refused, "as it could do no good." He seems to have had no more confidence in his profession than had the lady of the house. The child died on the following day, and was buried with its ill-fated mother. The authorities, apprised of these doings, ordered an exhumation, and owing to the appearances presented, certain organs were removed for chemical analysis. These were divided into two parts, one being tested by the local doctors and the other sent to Professor Christison for separate examination. Meanwhile Margaret was arrested, and emitted a declaration which the judge afterwards described as "replete with misrepresentation, falsehoods, equivocations and contradictions." On her trial the local doctors stated that arsenic was present in the deceased Jean Wishart's stomach and that her death had been occasioned by that poison. As regards the child, no arsenic was recovered. The tests applied by Dr. Christison in the mother's case yielded incontestable evidence of arsenic, though the quantity procured did not exceed the fortieth part of a grain. The defence relied mainly on the prosecutor's failure to trace to the prisoner the purchase or possession of arsenic, and also upon a peculiar incident connected with one of the Crown witnesses. This woman, Mary Greig, an intimate friend of the Wisharts, had been three times sent for to the prison by Margaret, who finally prevailed upon her to say, in presence of the jailer and two fellow-prisoners, that she (Greig) had gone with the blind woman to three several doctors in the town to buy poison,

but without success, and that they had in the end obtained some from a chemist. The truth of this singular statement the witness on oath solemnly denied, explaining that she had been induced to make it solely out of pity for the prisoner, who "grat and urged sore upon her to say these words." The jailer and the other felons were the chief witnesses for the defence, and the judge, in charging the jury, observed that he "had no hesitation in saying he believed Mary Greig in opposition to him and his associates." Andrew Roy had discreetly vanished; but David Edward, another boarder, who bore flagrantly false witness in Margaret's behalf, was committed for perjury. The jury found the pannel guilty of poisoning her sister, but found the poisoning of the child not proven; she was sentenced to death, and was executed at Forfar.

In view of the part played by the prisoners' declarations in the two cases last cited, it may be remarked that although the ostensible object of a judicial declaration is to enable an accused person voluntarily to explain such circumstances as appear to tell against him, in practice it is apt to prove merely a net to entrap him. The uneducated criminal invariably gives himself away, and even intellectual malefactors, however adroit and wary, often are tripped up by its invidious meshes. The wise say nothing, or are content simply to deny the charge; but there is in human nature a curious itch of self-justification which few so situated, be they innocent or guilty, seem able to resist, and to this amiable weakness the judicial declaration ingeniously appeals.

The third poisoning case by which the year 1827 is distinguished is that of Mary Ann Alcorn, a domestic servant, tried in June for administering to her master and mistress, Mr. and Mrs. Roach of Bath Street, Portobello, with intent to murder them, tartar emetic or powder of antimony.(*a*) Mrs. Roach had told the girl to make a

(*a*) Syme's Justiciary Reports, p. 221.

beefsteak pie and to take it to the baker's to be "fired." She did so, and in due course served the pie at table, when it was noticed that the gravy looked white. Mr. Roach ate heartily, his wife but sparingly; after dinner both were taken ill with similar symptoms—sickness, internal pain, swelling, feet and hands cold, perspiration—the husband's being much more violent than those of the wife. In the course of the attack Mr. Roach successively took some strong whisky toddy, two cups of coffee, a glass of brandy, and also "Anderson's Pills," the menstruum being more toddy; but despite the drastic character of this treatment, or perhaps because of it, he "suffered severely afterwards," and for some days his life was in danger. Mary Ann, being apprehended, at first denied, but later admitted having put a powder, which she got from a neighbour's servant, into the pie, "merely for a bit of fun." But for the recovery of the subjects the joke would probably have been her last. It appeared that she had been incited to the act by a discharged servant, with a grudge against the Roaches. The doctor who attended the patients held that some preparation of lead, not antimony or tartar emetic, had been employed; and Dr. Christison, while unable to detect any in the remains of the pie, had no doubt whatever that poison of some sort had been swallowed. The prosecutor withdrew the charge of attempt to murder, and upon that of intent to do grievous bodily harm the jury found a verdict of guilty. A sentence of twelve months with hard labour must have gone some way to correct Mary Ann's defective sense of humour, and was certainly, in the circumstances, lenient. The contemporary report describes her as "surprised," but whether agreeably or otherwise does not appear.

We have seen in the case of Mrs. Smith how a timid or stupid jury may, by adopting the Scots form, Not Proven, frustrate the ends of justice. An instance equally scandalous is afforded by the case of John Lovie, tried at Aberdeen in September of the same year for the murder of a servant-

girl.(*a*) This scoundrel, a farmer near Fraserburgh, had seduced one of his maids named Margaret McKessar, who believed and expected that he would marry her. At the date in question she was some five months with child, and their relations were well known to the other inmates of the farm. One of these, Alexander Rannie, a ploughman of seventeen, was asked by his master how much jalap would constitute a fatal dose, and also as to the relative merits of laudanum and arsenic. The lad referred him for information upon these points to one Suttie, "a kind of prophesier in the country," but Lovie does not seem to have consulted that expert. Pursuing his scientific enquiries, Lovie in the beginning of August called at a chemist's shop in Fraserburgh. "Would an ounce of jalap be a good dose—not for a beast but for a body?" he asked; being told that it would kill any person, he bought an ounce and said he would divide it. He then asked what was the best poison for rats, and having learned that arsenic was deemed the most efficacious, departed with his purchase. Next day, after dinner, both the ploughman and the girl suffered from a severe attack of dysentery, from which, however, they recovered; so Lovie paid another visit to the chemist, and said he would now take the poison—"they were much infested with rats." He was supplied, according to the guileless fashion of the time, with an ounce of arsenic. On Tuesday, 14th August, Margaret McKessar rose in her usual health, and after breakfast was seized with violent pain and sickness, which continued throughout the morning, till in the afternoon her sufferings were terminated by death. To the master who was "working at his neeps," Rannie the ploughman brought word of her sudden illness, but Lovie continued his labours, merely remarking that if she were so bad as that, "she would not be long to the fore." The girl's mother was at work near him in the same field, but not only did he fail to acquaint her with her daughter's con-

(*a*) Syme's Justiciary Reports, Appendix No. II.; *Black Kalendar of Aberdeen*, pp. 199, 202; *Edinburgh Medical Journal*, xxix. 415.

dition, but expressly ordered Rannie not to tell her. When they returned to the farm for dinner the girl was dead. Meanwhile a doctor had been sent for by Lovie's mother; he was from home, but his apprentice came and saw the body; he "tried her mouth with a candle, and said there was no breath there." Margaret was buried on Thursday; there had been some talk of having the body opened, but to this Lovie strenuously objected, craftily representing to the girl's relatives the scandal that would ensue should it be found she was "with bairn." The authorities, however, were less susceptible, and on Saturday the body was exhumed in presence of two surgeons from Fraserburgh, who removed certain organs for chemical analysis, parts of which were sent for separate examination to Dr. Blaikie, Aberdeen, and to Dr. Christison, Edinburgh. These gentlemen duly reported that they found in the stomach and its contents oxide of arsenic, which in their decided opinion was the cause of death. When Lovie heard that the body was to be "lifted" he asked a significant question: "Would it swell if she got poison?"; and later, being advised by a friend inconfident of his innocence "to take the south road," *i.e.* to fly the country, he denied his guilt, adding that he had never bought, used or seen any poison in his life. As the result of the investigation Lovie was arrested. In his declaration the prisoner took the customary liberties with truth: he never had intimate relations with the girl, and had no suspicion that she was with child; he told the chemist that he wanted stuff "to kill vermin upon black cattle," and was unaware that the substance supplied to him was poison; he used some of it to rub the backs of his cows and laid the remainder in the barn for rats; he knew nothing of the girl's illness until he went home to dinner, and he denied holding with Rannie and others any conversation regarding poison. All these statements were at the trial proved false, the testimony of the Crown witnesses was unscathed by cross-examination, and the defence called no evidence. Cockburn, who was Lovie's

counsel, addressed the jury in his behalf, but no report of the speech survives. Mr. Hill Burton, who notices the case, observes: "Mr. Cockburn made at that trial one of his greatest efforts of persuasive oratory, and delivered an oration which, in seductiveness to such a tribunal as he addressed, has probably never been excelled."(*a*) The effect of this eloquence—a unanimous verdict of Not Proven—was doubtless for Cockburn no less a personal triumph than had been for Jeffrey the acquittal of Mrs. Smith; in the interests of justice it can only be regarded as equally deplorable. Cockburn makes no mention of the case in his *Journal;* one would like to have had his private opinion.

In the minds of most of us the Clyde passenger steamer is associated with summer memories of days passed upon the waters of that noble estuary, and the idea of wrong-doing in such a connection is limited to the occasional excesses of some too-festive voyager. The curious in these matters, however, may recall that in the *Ivanhoe* Lawrie sailed to Arran with his victim Rose, whose body he was to leave hidden amid the lonely corries of Goatfell; and that by one or other of the steamers on the "Royal Route" Monson passed to and from Ardlamont upon Cecil Hambrough's affairs, and the mysterious Scott made his exit from the scene of the tragedy. These relations are something of the remotest; yet unlikely as it seems, murder and robbery were once actually done upon a Clyde passenger steamer, for which crimes two persons suffered the last penalty of the law.(*b*) The *Toward Castle* (like Sir Walter, I love to be particular) was built by William Denny, father of the great shipbuilding firm, at Dumbarton in 1822, ten years after the pioneer *Comet* first threshed with her paddle-wheels the waters of the Firth, and was engined by M'Arthur of Glasgow. A wooden ship of some 79 tons and

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(*a*) *Narratives from Criminal Trials*, ii. 61.

(*b*) *Trial of John Stuart and Catherine Wright or Stuart.* Edinburgh, 1829.

45 horse-power, she plied between Glasgow and Loch Fyne, upon the route so long followed by her famous sister, the *Columba*. On 15th December 1828, there embarked at Tarbert upon the *Toward Castle*, then on her return run to Glasgow, a blacksmith and his wife, John and Catherine Stuart, and a mother and daughter named M'Phail. The parties had foregathered at the inn, where Mrs. M'Phail's luggage was lightened by a gauger of two gallons of whisky which she proposed to smuggle. The Stuarts sympathised with her loss, and as the morning was cold upon the water, they suggested a dram in the cabin. There, as she could not read, Mrs. M'Phail consulted them as to the denomination of certain guinea notes. Her hospitable fellow-travellers then pressed her to sample the ship's beer. "It was very bitter," she afterwards told the jury, "I never tasted such infernal strong beer in my life, and I spat out every drop, and wiped my mouth with my apron." As the old woman could by no means be induced to partake further of their bounty, the pair turned their attention to another passenger, a stout merchant from Ulva, Robert Lamont by name, on whose broad bosom the outline of a bulky pocket-book was plainly visible. He was travelling with a cousin, who preferred to remain on deck. Lamont made no difficulty of accepting gratuitous refreshment, but declined to pay for drinks, deeming the price prohibitive—"it cost 9d. a bottle"; and so generously did his hosts stand treat that, as appears from the evidence of the steward, they drank the ship dry —"three gills, three bottles of porter, and a dozen of ale; there was no more on board." One tumbler only was in use, and it was noticed that before Lamont drank, Mrs. Stuart "put the tumbler in below her mantle," and once, as her husband was about to drink, she "pulled it from his mouth and spilt it over his breast, and he damned her for it." When the steamer reached Renfrew Ferry, John Lamont went below to look after his relative, whom he found alone in the dark cabin, insensible, with his empty pocket-book lying on the floor at his feet. John at once

informed the captain that his cousin had been robbed, whereupon the Stuarts were "laid hold off" and searched, £19, 7s. in notes and silver, and a black purse, all afterwards proved to have been Lamont's property, being found upon them. When at 6 P.M. the *Toward Castle* reached the Broomielaw, Stuart and his wife were taken into custody, and two bottles containing laudanum were discovered in their possession. A doctor, summoned to attend Lamont, applied the stomach-pump, but the patient never regained consciousness, and died that night aboard the boat. On the trial of the Stuarts at Edinburgh in July 1829, the facts already stated were clearly established. Two surgeons, who conducted the post-mortem, deponed that they saw no sign of natural disease; Drs. Ure and Corkindale, who made the chemical analysis, reported that laudanum was present in the contents of the stomach and probably caused the death. No witnesses were called for the defence; the jury found both prisoners guilty, and sentence of death was pronounced accordingly. To their own counsel before the trial the couple fully acknowledged their guilt, and it further appears that they had adopted "doping" as a means of livelihood. The practice seems to have been prevalent at the time and other cases are upon record.

The case of Elizabeth Jeffray, tried at Glasgow in April 1838, is noteworthy not only as one of double murder, but from the fact that there was, in the ordinary sense of the term, no motive for the first crime, it being purely experimental and, as it were, a rehearsal of the second.(*a*) This woman, whose "well-moulded form and beautiful countenance" favourably impressed her biographer, was in her youth seduced by a "titled villain." After divers less distinguished experiences, she became the wife of a militiaman named Jeffray, and settled at Carluke, where, being unscrupulous and of a passionate temper, she was more

(*a*) Swinton's Justiciary Reports, ii. 113; *A Sketch of the Life and Trial of Mrs. Jeffray.* Glasgow, 1838.

feared than beloved by her neighbours. There lodged with her an infirm old pauper, called Mrs. Carl, and a young miner from Skye, named Munro, who had intrusted his savings—some £10—to his landlady's keeping, and as he was about to leave Carluke, he naturally required restitution. This on various pretexts she delayed to make; there was the expense of her daughter's forthcoming marriage, and it was inconvenient for her then to find the money. Munro continuing to press his claim, early in October Mrs. Jeffray sent to a local druggist by a neighbour's child "a line for 3d. worth of arsenic to poison rats," and obtained half an ounce of that specific. On the night of Wednesday, the 4th, old Mrs. Carl being confined to bed, attended only by a boy, her nephew, Mrs. Jeffray visited the invalid with a drink of warm whisky, meal and cream of tartar, which she said would do her good. The old woman demurred, but Mrs. Jeffray gave a taste to the boy, who, inferring the wholesomeness of the remedy from its repellent flavour, advised his aunt to take it, which she did. Soon after she became violently ill, and the boy, who was himself sick during the night, roused the landlady to tell her that his aunt was dying; but Mrs. Jeffray refused to rise, as it might waken the lodgers. Next morning Mrs. Carl was dead; she was buried and, as Lord Braxfield might have said, "nae mair aboot it." A fortnight later Mrs. Jeffray called upon the druggist and bought another threepennyworth of arsenic, remarking that "*she had killed one rat with the first quantity, and she wanted to try it again.*" On Saturday, the 28th, Munro left work early in good health and spirits, and ready for his dinner—porridge—which his landlady had prepared. After eating it he was seized with acute pain, vomiting, etc., and went to bed, from which he never rose. Terrible thirst was throughout a marked symptom, and from the first, as is expressively recorded, he "took a fear at the porridge." Despite her lodger's sufferings, Mrs. Jeffray would not send for a doctor, alleging to several persons who urged her to do so, that Highland folk were "narrow-

minded" and Munro would grudge the expense, also that she had been three times for Dr. Rankine, her own doctor, but he was not to be found. On the Monday night, however, she summoned a surgeon, who "thought it was diarrhœa" and prescribed a rhubarb powder, which he prepared and left with her to be administered. Instead of relieving the patient who was somewhat easier, the powder made him much worse; he died in great agony, and was buried next day. Questioned as to Munro's money, which was known to have been in her hands, Mrs. Jeffray explained that she had given it to him to send to his relatives in Skye. On 3rd November her daughter was married with undue magnificence, the number of the bride's frocks provoking envious comment. A further sensation was provided next day by the exhumation of Munro's body, followed on the 6th by that of Mrs. Carl. As in neither case was there any indication of natural death, Mrs. Jeffray was apprehended, and in due course was indicted for the murders. The chemical analyses, conducted as regards Munro by Drs. Logan and Rankine, and as regards Carl by Professors Traill and Christison, were conclusive of the presence of arsenic, which in the opinion of those experts was undoubtedly the cause of death. It was proved that the prisoner had never called for Dr. Rankine, and that Munro had sent no money home to Skye. For the defence, an attempt to give to the supposititious rodents a local habitation in the garret was unsuccessful. After a trial lasting eighteen hours the jury by a majority found the prisoner guilty, but for some inexplicable reason unanimously recommended her to mercy. The judge in passing sentence observed that he could hardly conceive how a double murder came within the limits of mercy, and as the Home Secretary shared his Lordship's difficulty, Mrs. Jeffray paid the full penalty of her crimes. With characteristic firmness she refused to confess her guilt, and died inflexible to the end and unrepentant.

A case of exceptional interest occurring in 1844—the trial of Christina Gilmour for the murder of her husband

—is remarkable both in respect of its unusual features and its surprising result.(*a*) The daughter of a substantial farmer in Ayrshire, Christina had been educated somewhat above her condition, and as she was as fair as accomplished, her parents expected her to make a good marriage. A suitable *parti* was found in John Gilmour, a Renfrewshire farmer of worth and means, whom Christina was by her family induced to accept, though she had fixed her heart upon another. The wedding took place in November 1842, and the pair set out for their future home at Inchinnan, near Renfrew. They had no sooner arrived there than the bride announced to her husband that she would never live with him as his wife. How the situation might have developed need not concern us, for six weeks later John Gilmour was in his grave. On 26th December Mrs. Gilmour ordered her maidservant, who was on leave for a couple of days, to buy in Paisley "twopence worth of arsenic to kill rats," which the girl obtained and on her return delivered to her mistress. On the 29th John Gilmour, a strong man of thirty in perfect health, was seized with the symptoms characteristic of arsenical poisoning. Notwithstanding the assiduous attentions of his wife he grew gradually worse. On 6th January Mrs. Gilmour went early to Renfrew for the alleged purpose of getting "something that would do her husband good." On her return she inadvertently dropped a black silk bag, which was picked up by one of the farm hands. He examined it and showed it to the maid, who gave it to her mistress. The contents, a little phial of liquid that smelt like scent and a paper packet marked "Poison," Mrs. Gilmour explained as "turpentine to rub John with." On the 7th a young lady, describing herself as "Miss Robertson" of Paisley, obtained from a Renfrew chemist twopence worth of arsenic upon the well-worn pretext.

(*a*) Broun's Justiciary Reports, ii. 23; *Report of the Trial of Mrs. Gilmour.* Edinburgh, 1844; *Twelve Scots Trials*, pp. 191-220.

At a later stage three witnesses identified the pseudonymous purchaser with the fair Christina. Though during the illness Mrs. Gilmour represented her husband as refusing medical aid, he had without her knowledge sent for a doctor from Renfrew, but that physician being when he came the worse of drink, was in no condition to make a diagnosis. On the 8th, by request of a relative, Dr. M'Kechnie of Paisley visited the patient. He was not satisfied with the case, and told Mrs. Gilmour to preserve for his examination the vomited matter, etc. Calling next day he asked for these, but she said there was so little that it was not worth keeping. On the 11th the doctor found the patient in a dangerous state. Soon after he left John Gilmour died, expressing a wish "to be opened," and exclaiming with his latest breath, "Oh, that woman!—If you have given me anything, tell me before I die!" The funeral over, Mrs. Gilmour went home to her parents, and resumed correspondence with her first love. Rumour was busy with the farmer's mysterious fate; his wife had told several people that she had married him against her will and "would rather have preferred one Anderson"; in the whole circumstances, especially in view of her repeated purchases of poison, an enquiry was deemed advisable, and on 22nd April the authorities ordered exhumation. Two doctors having reported that the deceased died from the effects of an acrid poison, probably arsenic, the police went down to Ayrshire with a warrant for the widow's arrest. But tidings of what was afoot had been before them, and Mrs. Gilmour had disappeared. She was traced to Liverpool, from which port she had sailed in a packet-ship for America, but her pursuers, taking a Cunard steamer, reached New York before her. After lengthy proceedings, caused by the feigned insanity of the fugitive, she was extradited and brought back to Scotland. In her declaration before the Sheriff the prisoner, abandoning the rat motif, said that being unhappy in her marriage, she bought arsenic for the purpose of suicide, but changing

her mind, destroyed it; she gave none to her husband. On 12th January 1844, exactly a year after his death, the widow was brought to trial at Edinburgh. The medical evidence as to the cause of death was incontrovertible; the analytical tests, conducted separately by Drs. M'Kinlay and Christison, established the presence of arsenic in the stomach, liver, and intestines. The defence maintained that John Gilmour had poisoned himself either accidentally or voluntarily, but neither proposition received much support from the evidence. The unanimous opinion of the four Crown doctors that arsenic had been given in repeated doses, disposed of the question of suicide. As to the theory of accident, it appeared that long before his marriage Gilmour once poisoned some rats with arsenic, which he got from a neighbouring farmer; but there was no proof that any of the poison remained in his possession. The defence called no witnesses; and after a damning speech by the Lord Advocate and a sentimental address from the other side, the Lord Justice-Clerk (Hope) charged strongly in favour of an acquittal, and the jury followed the judicial lead. So Christina returned to her native parish, where, though she did not after all get Anderson, she lived to a ripe and venerable age. A certain clergyman told me once that as a boy he often saw her in church—a charming old lady, serene and beautiful, famed throughout the district for her singular piety.

The curious unwillingness of juries to convict a woman upon a charge of poisoning on evidence merely circumstantial however cogent, is, as we have seen and shall continue to find, a marked feature of such cases. A flagrant example is that of Janet Campbell or M'Lellan, tried at Edinburgh in November 1846 for the murder of her husband, James M'Lellan, a weaver at Dunning, Perthshire, nearly thirty years his wife's senior.(*a*) She had an intrigue with a lodger, resulting in the birth of twins, and the domestic

(*a*) Arkley's Justiciary Reports, p. 137.

atmosphere was in consequence perturbed. The goodman made a practice at family prayers of referring pointedly to her transgression, which, instead of comforting the fair penitent, so exasperated her that on one occasion she pursued the suppliant with an axe. On 3rd July, M'Lellan, a hale man for his years, was taken ill, with symptoms indicating arsenic, after breakfast prepared by his wife. Next day, feeling "a good deal settleder," he was able to rise, but after breakfast the symptoms recurred in aggravated form. His wife was strangely annoyed when he was sick in a vessel containing "the sow's meat." Advised to invoke medical aid, she refused to do so—"he [her husband] was not so ready sending for skill to her when she needed it"; but M'Lellan insisted on seeing a doctor, as he believed he had been poisoned. Dr. Young, when he came, formed the like opinion, which was confirmed on his detecting arsenic in the vomited matter. The patient died that night, and his widow was arrested. In her declaration the prisoner denied that she ever had in her possession, or attempted to procure, poison. At the trial, it was proved that she applied personally to Dr. Young for arsenic "to poison rats," which, owing to the notoriously strained relations of the spouses, the physician declined to give her; that she then sent a girl, Davidson, to buy arsenic from Dr. Martin, but without success; and that on two occasions within a week of the death she obtained from a chemist by another girl, Aitken, twopence worth of that poison. She explained the second purchase to Aitken by saying that a mason who lodged with her "had tramped upon the saucer in which the former quantity had been placed," which the mason at the trial swore was false. No trace of poison could be found in her house, nor was there any evidence of how she had disposed of it. Dr. Thomson of Perth and Professor Christison found arsenic "to a considerable extent" in the stomach, liver and lungs of the deceased, and were confident that it caused his death. For the defence, Dr. Martin's assistant said that, when the twins

were born, M'Lellan asked him for "poison to kill rats," which he refused to supply; and an old flame of M'Lellan's stated that once upon a time she had rejected his suit, whereupon he threatened suicide. But as this incident took place thirty years before, it seemed improbable that the effects would be so far-reaching. The Lord Justice-Clerk told the jury that looking to the whole circumstances of the case, it was impossible to suppose the deceased had poisoned himself; yet that enlightened tribunal returned a verdict of Not Guilty! One wonders what amount of proof *would* have sufficed for those disciples of Didymus.

A case tried at Glasgow in January 1850 is an interesting exception to the general rule I have mentioned. The scene was the village of Strathaven in Lanarkshire; the characters, Margaret Lennox or Hamilton, a young married woman, and her sister-in-law.(*a*) Jean Hamilton, lately in service with the Rev. Mr. Campbell, an Edinburgh minister, had been seduced by that divine, who paid her £26 as aliment for her expected child. It is gratifying to know that he was in consequence deposed. The girl returned to her mother's house, where in due course she gave birth to a child. She was attended by Margaret, but instead of making a good recovery, she was attacked by frequent sickness. On 7th July Margaret obtained from a doctor for the invalid a calomel powder, upon taking which Jean became violently sick. Margaret undertook to bring the doctor to see her, but failed to do so, and next day the girl died. A post-mortem was held, and on subsequent analyses by Professors Penny and Crawford, twenty grains of arsenic were found in the stomach. Shortly before the death Margaret obtained from an apothecary's wife arsenic "to kill rats," but in her declaration she altered the objective to bugs. The clerical endowment had been placed upon deposit receipt in Jean's name with the local bank. Lord Cockburn, who tried the case, gives the following account of it:

(*a*) *Edinburgh Evening Courant*, 12th January 1850.

The poisoner had first stolen the bank deposit receipt, and finding that she could not get the money without the owner's signature, she forged it, and then, having committed these two offences, she murdered the victim in order to hide them. She was tried for the whole three crimes. The forgery and the administration of arsenic were very clearly proved. But there was a doubt about the theft, and therefore the jury found it not proved. Yet upon this fact a majority of them grounded by far the most nonsensical recommendation to mercy that any jury known to me ever made themselves ludicrous by. They first recommended without stating any reason, and on being asked what their reason was, they retired, and after consultation returned with these written words, viz.: that they gave the recommendation "in consequence of the first charge of theft not having been proved, which they believe in a great measure led to the commission of the subsequent crime"! Grammatically, this means that it was their acquittal of the theft that did the mischief, but what they meant was, that the murder was caused by a theft not proved to have existed. It is the most Hibernian recommendation I have ever seen. Though backed by the whole force of the very active party opposed to capital punishment, it failed, and the poor wretch died.(*a*)

In July of the same year there was tried at Edinburgh a case which, in its hideous blend of hypocrisy and cruelty, anticipates and rivals that of Dr. Pritchard.(*b*) William Bennison, an Irishman, when a lad of twenty, married Mary Mullen at Armagh in 1838. He deserted her in the following year, and at Paisley bigamously married Jane Hamilton. A few weeks afterwards he returned to Ireland and brought his first wife to Airdrie, where she fell sick and died, probably by poison. He then rejoined his other spouse, to whom he presented the wardrobe of her predecessor as the clothes of "his deceased sister Mary." Later, the second Mrs. Bennison learned that her sister-in-law was alive and well; but her husband explained that the deceased of whom he had spoken was "only his sister in the Lord." Thereafter the couple removed to Edinburgh, where they occupied a flat in Stead's Place, Leith Walk. An enthusiastic Methodist, Bennison received from

(*a*) *Circuit Journeys*, pp. 362, 363.

(*b*) Shaw's Justiciary Reports, p. 453; *A Full Report of the Trial of William Bennison*. Leith, 1850.

his pastor at the trial a glowing character. He took the keenest interest in the spiritual welfare of the flock, never missed a meeting, was an eager proselytizer, visited the sick, and possessed a notable gift of fluency in prayer. His character was akin to those "holy Luthers of the preaching North" of whom we read in Synge's *Playboy of the Western World*. The favourite convert of this modern Major Weir was a girl named Robertson, the sharer of his pew in chapel and the consoler of his leisure hours. "Their conversation," says Miss Robertson, "was always of religion." Mrs. Bennison, though not a strong woman, enjoyed fair health; her sister, Ellen Glass, was surprised to hear from Bennison on Sunday, 14th April, that his wife had been seized with illness and that the doctor despaired of her life. She hastened to the house and found her sister, whom she had seen shortly before in her usual health, violently sick and in great pain. She remained with the sufferer, as, in her own expressive phrase, "she saw that death was on her." As a matter of fact no doctor had seen the patient, and when it was suggested to send for one, Bennison said, "It's of no use; she is going home to glory." Mrs. Bennison told her sister she was taken ill after eating porridge. She died that night. During her last hours her husband, who had asked for the prayers of the congregation, busied himself in preparing "the dead clothes" and writing funeral letters, so that when all was over the final arrangements were well in hand. Advised of his loss—he had never entered the sickroom—he piously remarked, "Thank God! She has gone to glory." The burial took place forthwith, Bennison drawing £11 from divers benefit societies of which he was a member. He informed his tailor, from whom before the death he had bespoken mournings, that he had never seen a "pleasanter" deathbed. Now it happened that, when his wife lay dying, Bennison put out some cooked potatoes, which were devoured by two of the neighbours' dogs; these presently died in agony, the fact aroused suspicion,

and a rumour spread that Mrs. Bennison had been poisoned. The widower was much distressed. He called upon a druggist named M'Donald, and referred to a recent purchase by him from M'Donald's wife of half an ounce of arsenic "for rats in the cellar," on which he feared the authorities might put a false construction. He hoped M'Donald would say nothing about it: "As I got it from your wife, you can easily say I did not get it from you." This casuistry not commending itself to the chemist, Bennison said that God had carried him through many difficulties, and would doubtless see him through this one. He was, as will appear, mistaken. Next day the body was exhumed in presence of the bereaved husband, who identified it as that of his "dear Jane." He was subsequently arrested on the charges of bigamy and murder. At his trial Dr. (afterwards Sir Douglas) Maclagan stated that he found arsenic in the stomach and liver of the deceased. He also detected its presence in a vessel into which she had vomited, and in a piece of paper recovered from the grate; but he failed to find any in the bodies of the dogs. From the symptoms, morbid appearances, and results by analysis, he had no hesitation in attributing the death to arsenic. Drs. Spittal and Anderson corroborated. The jury unanimously found the prisoner guilty, and he was sentenced to death. On leaving the dock he made a canting speech, in which he declared his innocence before God and forgave the sins of the Crown witnesses. Bennison in the end confessed his crime—he had put arsenic in the porridge—and was duly executed. Seldom has a fouler scoundrel graced the gallows. His case is the subject of an instructive article in the *Edinburgh Courant*,(*a*) dealing with the strange affinity between religious enthusiasm and crime.

Apart from those criminals who by the incompetence or pig-headedness of juries escape the grasp of justice, there is

(*a*) 29th July 1850.

a smaller class who owe their immunity from punishment to some loophole in the law itself. Of such technical acquittals three examples may here be noted. At Glasgow in May 1843 Mary M'Farlane or Taylor was charged with a double murder.(*a*) When the diet was called, objection was taken to the citation of the pannel in respect of an error in date, and the case was certified to the High Court. This certification was fallen from, and no further proceedings were taken. Similar results followed in nineteen other cases at the same circuit. Lord Cockburn, who presided, observes :

> There was also the case of a woman accused of murdering her husband, but it was one of the twenty, and did not come on. It will be a famous case in its day, however. She first committed the capital offence of giving her husband a dose of arsenic, which very nearly killed him, but he survived it. Thinking, truly, that it was her unskilfulness in administering that made this dose fail, she resolved to improve herself by a little practice, and then to renew the attempt. She therefore experimented upon a neighbour, whom she killed ; and having now ascertained how to proceed, she gave another dose to her spouse, and killed him too. She was indicted for the two murders and the abortive administration, an awkward accumulation of charges. It being in her case that the motion to put off all the trials was made, she was brought to the bar ; and, whether it was fancy or not, struck me as having a very singular expression. She was little, apparently middle-aged, modest and gentle looking, with firm-set lips, a pale countenance, and suspicious restless eyes.(*b*)

This scandalous miscarriage of justice led to an amendment in the practice of citing parties at circuit ayres. The second instance is the case of Janet Hope or Walker at Edinburgh in July 1845.(*c*) This woman, wife of the landlord of the Blue Bell Inn, Lockerbie, was charged with poisoning by arsenic George Tedcastle, her son by a former husband. While incarcerated in Dumfries jail the prisoner confessed her guilt to the keeper, who had constituted himself her spiritual adviser. At the trial, a question as to what she said to him being disallowed, the prosecutor

(*a*) Broun's Justiciary Reports, i. 550. (*b*) *Circuit Journeys*, p. 190.
(*c*) Broun's Justiciary Reports, ii. 465.

abandoned the charge, and a verdict of not guilty was returned. The third and most deplorable example occurred at Inverness in April 1852, where Sarah Anderson or Fraser and James Fraser, her son, were convicted of poisoning William Fraser, Inver, Easter Ross, husband of one, and father of the other pannel.(*a*) Fraser was sixty years of age, his wife forty, and their son seventeen. Purchases of arsenic by Mrs. Fraser at Tain were proved, following upon which the husband became suddenly ill. Before his death she was heard to say that if she were a widow, there would be none happier in Ross-shire. No doctor was sent for, and the man died with all the usual symptoms. Forty-five letters written by mother and son to each other were recovered; and on his judicial examination the son was asked to explain certain passages:—"Hasten the day when you will be a widow"; "I pray to heaven I will soon have it in my power to release you from the tyrant"; "I wish the world were rid of such a monster"; "Many others have wished my father's death as well as I"; "If you have any spunk you will not be long in your present condition," etc. He declared that his father was unkind to his mother —of which, by the way, there was no evidence—and what he meant was, that he hoped soon to be in a position to support her. The mother declared that all the arsenic was consumed by rats. On their trial their guilt was clearly proved, and the jury found accordingly; but sentence was delayed, owing to an objection taken for the defence to the admission of certain evidence. In the list of productions a packet of powder, sent to Dr. Maclagan for analysis, which he found to be arsenic, was described as a "sealed packet," whereas, though the seals were intact, the wrapper had been cut by him in order that he might examine the contents. The point was certified for the consideration of the High Court. On 1st June, before that tribunal, it was

(*a*) Irvine's Justiciary Reports, i. 1, 66; *Courant; Scotsman;* 17th April 1852.

further objected that no precise day had been fixed for the diet being called, so the diet was held to have fallen, and the warrant against the prisoners was discharged. On 12th July an attempt by the Crown to proceed against them upon a new indictment failed, the Court holding that, having tholed an assize, they could not again be tried for the same offence. Thus, thanks to these red-tape entanglements, two convicted murderers were restored to society. Lord Cockburn, who presided at their trial, has given his impressions of the case :

> The only interesting case was that of Mrs. and Mr. Fraser, a mother and her son (a lad), who had chosen to poison their father, a shopkeeper in Ross-shire. They thought him a useless creature, and that they would be better without him, especially as the wife had forged his name to bills, in reference to which his removal before they became due would be convenient. I never saw a couple of less amiable devils. The mother, especially, had a cold hard eye, and a pair of thin resolute lips, producing an expression very fit for a remorseless and steady murderess. She saw her daughter, a little girl, brought in as a witness, and heard her swear that there were no rats in the house and that her father's sufferings were very severe, with a look of calm ferocity which would have done no discredit to the worst woman in hell. They were both convicted, but I fear the gallows won't get its due . . . which will be a pity.(*a*)

We have seen that his Lordship's fear was justified.

As it too rarely happens that we have the advantage of a judge's private opinion upon cases tried before him, I shall give one other instance from Lord Cockburn's reminiscences : that of Elliott Millar at Jedburgh in September 1847.(*b*)

> The only curious case on this Circuit was that of a worthy husband who wanted to get his spouse killed ; but instead of resorting to commonplace violence by himself, he tried to make the law do it. For this purpose he fell upon the device of making it appear that she had poisoned him ; for which she was committed for trial and was very near being tried. But suspicion being excited, it was discovered that his whole statements on precognition were false, and all his dexterous imitations of being poisoned, utter fabrications. The result was that he was brought to trial himself for fraud, and was transported for seven years.(*c*)

(*a*) *Circuit Journeys*, p. 377. (*b*) Arkley's Justiciary Reports, p. 355.
(*c*) *Circuit Journeys*, p. 333.

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It appears that this ingenious rascal complained of illness after breakfast; took an emetic, saying his wife had poisoned him; and preserved for examination the coffee and vomited matter. These on analysis were found to contain sugar of lead, which, as he subsequently confessed, he had himself introduced from a supply obtained by his wife with a view to suicide, in attempting which she was unsuccessful!

Confronted with the task of tackling in a single paragraph the complexities of our greatest *cause célèbre*, I envy the skill of those caligraphists who within the compass of a threepenny piece can depict our most familiar prayer. But though it is impossible in such conditions to appreciate Madeleine Smith's achievement, no paper on Scots poisoning would be complete without her.(*a*) The daughter of an architect of position in Glasgow, Madeleine at nineteen was a dashing damsel, accomplished and attractive, an ornament of middle-class society in that city. Her charms caught the roving eye of a young Frenchman, L'Angelier, clerk in a commercial house, and he contrived through a common friend an introduction to her in the street. This ill-omened meeting occurred in 1855. Socially, of course, L'Angelier was impossible; but he was a good-looking little "bounder," and the girl fell in love with him. They corresponded constantly, with that amazing mid-Victorian voluminosity which, happily, is a lost art, and met as often as circumstances permitted. No one in Madeleine's set knew of their intimacy; but a romantic spinster friend of L'Angelier, Miss Perry, acted as go-between, and one of the Smith's maids connived at their clandestine meetings. In the spring of 1856 the flirtation developed into an intrigue, the changed relations of the lovers being reflected in the tropical and abandoned tone of the fair correspondent. They addressed one another as "husband" and "wife," and there can be little doubt that in the belief of L'Angelier, as well as by

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(*a*) Irvine's Justiciary Reports, ii. 641; *Trial of Madeleine Smith*, edited by A. Duncan Smith, 1905.

the law of Scotland, they actually were married. An elopement was anticipated, but the gallant's official salary amounted only to ten shillings a week and the lady was quite dependent on her parents, so the prospect was none of the brightest. In November 1856 the Smiths occupied a main-door corner house, No. 7 Blythswood Square. The stanchioned windows of Madeleine's bedroom in the basement opened directly upon, and were partly below the level of, the pavement of the side street; it was the lovers' custom to converse at these, the sunk part formed a convenient letter-box, and when the coast was clear she could take him into the house. In the flat above lived a gentleman named Minnoch, who began to pay his charming neighbour marked attentions. Whether or not the copiousness of her draughts of passion had induced satiety, Madeleine was quick to realise that her position as the wife of a prosperous Glasgow merchant would be very different from her future with the little French clerk, so she gave her responsible wooer every encouragement. On 28th January 1857, with the approbation of her parents, she accepted his hand. Meantime her correspondence with L'Angelier was maintained at the accustomed temperature, till, early in February, she made an effort to break the "engagement," and demanded the return of her letters. Rumours of Mr. Minnoch's attentions had reached L'Angelier; he suspected what was afoot, taxed her with perfidy, and refused to give up the letters to anyone but her father. The mere suggestion drove Madeleine well-nigh crazy: the letters were indeed such as no parent ever read and few daughters could have written; she poured forth frantic appeals for mercy and solemnly denied that she had broken faith; she besought him to come to her and she would explain everything. L'Angelier stood firm; he has been called blackguard and blackmailer; as I read the facts, it was neither revenge nor money that he wanted, but his wife. "I will never give them up," he told his friend Kennedy, "she shall never marry another man so long as I live"; adding with

prophetic significance, "Tom, she'll be the death of me." A reconciliation was effected on 12th February, the correspondence was resumed on the old footing, and L'Angelier became again "her love, her pet, her sweet Emile." He told Miss Perry he was to see Madeleine on the 19th. That night he left his lodgings, taking the pass-key as he intended to be late; next morning his landlady found him writhing in agony on his bedroom floor, with all the symptoms of irritant poisoning. Whether the lovers had met or not is disputed, but in his diary, production of which at the trial was disallowed, L'Angelier wrote: "Thurs. 19. Saw Mimi a few moments — was very ill during the night." He recovered, but was never the same man afterwards. At 4 A.M. on Monday, 23rd, L'Angelier rang for his landlady, who found him suffering from another similar attack. The diary records: "Sun. 22. Saw Mimi in drawing-room—Promised me French Bible—Taken very ill." This meeting is otherwise established under Madeleine's own hand: "You did look bad on Sunday night and Monday morning. I think you get sick with walking home so late and the long want of food, so the next time we meet I shall make you eat a loaf of bread before you go out." L'Angelier said to Miss Perry, "I can't think why I was so unwell after getting coffee and chocolate from her [Madeleine]," referring to two different occasions; "If she were to poison me I would forgive her." He also told his friend Towers that he thought he had been poisoned twice, after taking coffee and cocoa. Now, prior to the first illness, Madeleine made an abortive attempt to procure prussic acid — "for her hands"—but no arsenic could then be traced to her possession. The day before the second attack she bought from Murdoch, a druggist, one ounce of arsenic "to send to the gardener at the country house"—Mr. Smith's summer villa at Row, on the Gareloch. On 5th March L'Angelier, whose jealousy had reawakened, wrote insisting on knowing the truth about Mr. Minnoch; that day Madeleine purchased from Currie, another druggist, a second ounce of arsenic

"to kill rats in Blythswood Square," and on the 6th she went with her family for ten days to Bridge of Allan. Mr. Minnoch was of the party, and the wedding was fixed for June. L'Angelier, on sick leave, had gone to Edinburgh, impatiently awaiting Madeleine's return, when everything was to be explained; on the 19th he followed her to Bridge of Allan. But Madeleine had come back on the 17th, and next day she obtained from Currie a third ounce of arsenic —"the first was so effectual." On the evening of Sunday, 22nd, L'Angelier returned to his lodgings: a letter forwarded to him from Glasgow had brought him home in hot haste; he looked well and happy, and after a hasty meal hurried away, saying he might be out late. At 2.30 A.M. his landlady, aroused by the pealing of the door bell, found him doubled up with agony upon the threshold. He was put to bed and a doctor sent for, who formed a hopeful prognosis; "I am far worse than the doctor thinks," cried the patient. He said nothing as to the cause of his illness, but asked to see Miss Perry; when that lady arrived L'Angelier's lips were sealed for ever. In his pocket was found the last letter of a remarkable series:

Why my beloved did you not come to me. Oh beloved are you ill. Come to me sweet one. I waited and waited for you but you came not. I shall wait again to-morrow night same hour and arrangement. Do come sweet love my own dear love of a sweetheart. Come beloved and clasp me to your heart. Come and we shall be happy. A kiss fond love. Adieu with tender embraces ever believe me to be your own ever dear fond MIMI.

The postmark was Glasgow, 21st March. L'Angelier's half of the fatal correspondence was discovered, Madeleine fled to Row and was brought back by her fiancé; an examination of the body pointed to poison, and she was apprehended. In her declaration she said that she had not seen L'Angelier for three weeks; the appointment was for Saturday, 21st, he came neither that night nor the next; her purpose in making it was to tell him of her engagement. As to the arsenic, she used it all as a

cosmetic, on the advice of a school-friend. She admitted giving cocoa to L'Angelier once at her window. Of the nine days' wonder of her trial at Edinburgh in July I have small space left to speak. No less than 88 grains of arsenic were found in the body, and the defence made much of the fact that this was the greatest quantity ever detected, arguing that so large a dose indicated suicide rather than murder. The unsoundness of this contention is proved by two subsequent English cases,(*a*) where 150 and 154 grains respectively were recovered. As regards the first two charges—of administration—the Crown was handicapped by the exclusion of L'Angelier's diary, and in the murder charge, by inability to prove the actual meeting of the parties on the Sunday night. There was proof that L'Angelier had talked once or twice in a vapouring way of suicide, but none that he ever had arsenic in his possession. The prisoner's account of her object in acquiring arsenic was contradicted by her old school-fellow, and the fact that what she obtained was, in terms of the Statute,(*b*) mixed with soot and indigo, rendered it strangely uninviting for toilet purposes. On the other hand, the doctors noticed no colouring matter in the body, but to this point their attention was not then directed. On the question of motive, it was maintained that the prisoner had nothing to gain by L'Angelier's death if her letters remained in his possession. These, however, having neither address nor any signature except "Mimi," afforded little clue to the writer's identity. But surely it was his *silence* that was for her the supreme object: how could that be ensured save by his death? Lord Advocate Moncreiff's masterly address, strong, restrained, convincing, was then, as now, unduly eclipsed by the brilliant emotional speech of John Inglis for the defence, held to be the finest ever delivered in a Scots court. The one appealed to the head, the other to the heart; each pledged his personal

(*a*) *R.* v. *Dodds*, 1860, and *R.* v. *Hewitt*, 1863.
(*b*) 14 Vict. c. 13, s. 3.

belief in the rightness of his cause. Lord Justice-Clerk Hope's charge favoured an acquittal; the jury found the pannel not guilty of the first charge, the other two not proven. In the popular verdict, "If she did not poison him, she ought to have done it," I am unable to concur. The amazing self-command with which the prisoner faced her ordeal, no less than her youth and beauty, inspired the pens of contemporary scribes. During the trial she received many proposals, lay and clerical; her fiancé was not an offerer. A surgeon named Tudor Hora was preferred, with whom she emigrated to Australia. Returning to England after his death, she was married on 4th July 1861 at St. Paul's, Knightsbridge, to Mr. George Wardle, an artist. She is said to have died in Melbourne in 1893.(*a*)

There is in the trial at Glasgow in December 1857 of John Thomson *alias* Peter Walker, known as the Eaglesham case—the first in Scotland for murder by hydrocyanic or prussic acid—a curious echo of that which we have just considered.(*b*) Thomson was employed as a journeyman tailor in the village of Eaglesham, near Glasgow. A girl named Montgomery had rejected his addresses and he vowed revenge. Thomson was much interested in the newspaper reports of Madeleine Smith's trial, discussed the relative drawbacks attending the use of arsenic and of prussic acid, and expressed his strong opinion that she should have been hanged. Having obtained by the carrier's boy from a Glasgow chemist 2 drachms of Scheele's prussic acid, for use as a "hair dye," Thomson on 13th September administered it to Montgomery in beer, leaving the girl locked in her room. She was found in a dying condition, and her death certified as due to apoplexy. On the 23rd, after ordering a second supply, he left his situation for Glasgow, where he attempted

(*a*) *Notes and Queries*, ii. S. iv. 311.

(*b*) Irvine's Justiciary Reports, ii. 747; *Report of the Trial of John Thomson alias Peter Walker* Edinburgh, 1858; "Poison and Plagiary," *infra*, pp. 121-142.

gratuitously to poison in whisky Mr. and Mrs. Mason, with whom he lodged. Suspicion was aroused, Montgomery's body was exhumed and examined, and Drs. M'Kinlay and Maclagan detected prussic acid in the stomach and spleen. Convicted on circumstantial evidence, Thomson was executed, confessing his guilt.

Glasgow contributes further to our subject the case of Dr. Pritchard, tried at Edinburgh in July 1865 for the poisoning of his wife by repeated doses of antimony, and of his mother-in-law by antimony and aconite.(*a*) "When a doctor does go wrong," Mr. Sherlock Holmes once remarked to his egregious colleague, "he is the first of criminals. He has nerve and he has knowledge. Palmer and Pritchard were among the heads of their profession." A hypocritical charlatan with a German diploma, handsome, plausible, and unscrupulous, Pritchard, after a variegated career, came to Glasgow in 1860. Though disliked and distrusted by his medical brethren he acquired a considerable practice; but his reputation suffered by his "treatment" of certain lady patients, and a fire in his house in Berkeley Terrace, involving the mysterious death of a servant girl, followed by a fraudulent claim on an insurance company, hardly enhanced his fame. An adept at self-advertisement, he was an enthusiastic Mason and a popular lecturer on his experiences of foreign travel, which, as he was unhampered by the laws of truth, were rich in surprising detail. His family worshipped him; his wife, to whom he was flagrantly unfaithful, was ready to accept anything—even poison—at his hands, while of his mother-in-law he is said to have been the idol. In 1864 we find Pritchard established at No. 131 (now 249) Sauchiehall Street, the household consisting of himself, his wife and children, a cook and a nurse-housemaid. The latter, Mary M'Leod, a girl of 16, had been the year before seduced by him and the subject of an illegal operation at his hands.

(*a*) Irvine's Justiciary Reports, v. 88; *Trial of Dr. Pritchard*, edited by William Roughead, 1906.

Mrs. Pritchard was aware of the intimacy. Two medical students boarded in the house. Mrs. Pritchard's illness began in October with persistent sickness. In November she went to see her parents, Mr. and Mrs. Taylor, at No. 1 Lauder Road, Edinburgh, where she stayed till Christmas. During the visit she was greatly better, but on her return home the sickness recommenced, occurring after food. Pritchard ascribed her illness to gastric fever, and Dr. Cowan of Edinburgh, her cousin, saw her; he did not consider her seriously ill. On 1st February 1865 she had a violent attack of cramp; Dr. (afterwards Sir William) Gairdner was sent for. The case puzzled him—there were no symptoms of fever, he thought she was intoxicated; so he wrote to the lady's brother, Dr. Michael Taylor, Penrith, recommending her removal to his care; but Pritchard said she was not well enough to travel. Meanwhile Dr. Cowan had told Mrs. Taylor that she ought to go to Glasgow to look after her daughter, and on the 10th the old lady arrived from Edinburgh. She was a hale woman of seventy, but in the habit of taking for neuralgic headaches Battley's Sedative Solution, a preparation of opium. On the 13th some tapioca prepared for the invalid was eaten by Mrs. Taylor, who immediately became sick, remarking that she must have got the same complaint as her daughter, upon whom she was in constant attendance. On the evening of the 24th Mrs. Taylor had tea with the family, wrote some letters in the consulting-room, and walked upstairs to her daughter's room, telling the maid to order sausages for supper. A few minutes later she was seized with illness, and rapidly became unconscious. Dr. Paterson was summoned, to whom Pritchard falsely stated that the old lady, while writing letters, had fallen off her chair in a fit and was carried upstairs, adding that she was given to liquor. Dr. Paterson examined her; she was dying, said he, under the influence of some strong narcotic, and Pritchard explained that she was in the habit of taking opium. Dr. Paterson was much struck by the ghastly

appearance of Mrs. Pritchard, sitting up in bed behind her dying mother. He formed the opinion that she was being poisoned with antimony, but "professional etiquette" prevented him interfering, and he left the house. Mrs. Taylor died that night. In her pocket was found the bottle of Battley, of which Pritchard took possession, saying it would never do for a man in his position to have it talked about. After the death, he met Dr. Paterson in the street and asked him to call on Mrs. Pritchard, which that gentleman did, confirming his impression that she was the victim of foul play. When Pritchard sent to him for Mrs. Taylor's death certificate Dr. Paterson refused to grant it, and wrote to the Registrar that the death was "sudden, unexpected, and to him mysterious"; this he thought should open the eyes of the authorities, but the Registrar destroyed the letter and did nothing further. So Mrs. Taylor was buried by her disconsolate son-in-law in the Grange Cemetery, Edinburgh. Mrs Pritchard's lingering illness continued, "one day better and two days worse," despite the unremitting care of her loving husband and physician. On 13th March he sent by M'Leod to the patient a piece of cheese, which she asked the girl to taste. Mary did so, and experienced a burning sensation and thirst. The cook, afterwards eating it, became violently sick and had to go to bed. On the 15th Pritchard ordered her to make egg-flip for the invalid. He carried two lumps of sugar from the dining-room into his consulting-room, and from thence to the pantry, where he dropped them into the flip. Mrs. Pritchard took a little and was sick; the cook drank the rest and suffered all night from pain and vomiting. On the 17th Mrs. Pritchard had a severe attack of cramp and became delirious. Dr. Paterson was sent for, and advised a sleeping-draught; as Pritchard said he kept no drugs in the house, Dr. Paterson wrote a prescription and departed. That night Mrs. Pritchard died in her husband's arms, Mary M'Leod lying on a sofa at the foot of the bed.

Pritchard took his wife's body to her father's house in Edinburgh, where at his request the coffin was opened in presence of the relatives, that he might kiss his "dearest Mary Jane" for the last time. Not Webster nor Tourneur, those masters of the horrific, ever conceived a scene so cynically atrocious. Meanwhile someone had written to the Procurator-Fiscal, calling his attention to these strange deaths; when Pritchard was in Edinburgh his house was searched and the inmates examined, and on his return he was arrested at Queen Street Station for the murder of his wife. On the discovery of antimony in Mrs. Pritchard's body that of Mrs. Taylor was exhumed, and the presence of the same poison being also in her case ascertained, Pritchard was further charged with her murder. The trial took place on 3rd July before the High Court; John Inglis, who had so successfully defended Madeleine Smith, presided as Justice-Clerk; the Solicitor-General (Young) prosecuted, and Mr. Rutherfurd Clark conducted the defence. The medical evidence as to the cause of death was in both cases conclusive. Pritchard had certified that of Mrs. Taylor as "Paralysis, 12 hours; Apoplexy, 1 hour," and that of his wife as "Gastric Fever, 2 months." Mrs. Pritchard's symptoms, as observed by Drs. Cowan, Gairdner and Paterson, directly negatived the truth of this, while other witnesses proved that Mrs. Taylor was quite well until her sudden seizure. There was no sign of apoplexy. The medical and chemical examinations made by Drs. Maclagan, Littlejohn, and Penny established the fact that both bodies contained antimony—that of Mrs. Pritchard being saturated with the poison. Antimony and aconite were found in the bottle of Battley, but no aconite could be detected in Mrs. Taylor's body. The unused tapioca was largely mixed with antimony. As regards possession of poison by the prisoner, despite his statement to Dr. Paterson he was proved to have been from September 1864 to 16th March 1865 a constant purchaser of deadly drugs: strychnia, conium, laudanum, morphia, tartarised antimony,

Fleming's tincture of aconite, atropine, etc. ; the quantities of antimony and aconite alone being largely in excess of those supplied to other medical men and much greater than could have been required in any ordinary practice. The opportunities for administration were obvious, but the cheese and the egg-flip were the only poisoned articles traced to Pritchard's hand. The Crown case, in other respects impregnable, was weakest upon the question of motive. Pritchard had promised to marry M'Leod if his wife died, and under Mrs. Taylor's settlement he received a life-interest in a few hundred pounds. That he would in any circumstances have married the servant-girl he had long before seduced is incredible ; and though his bank account was overdrawn, Mrs. Taylor would have lent him money, as she had previously done. It would be, for him, a sufficient reason for becoming a widower that he was tired of his wife and saw his way to a more attractive match ; as for Mrs. Taylor, her presence interfered with his scheme, and we know from his confession that she had "caught M'Leod and him in the consulting-room" ; probably she proved less complacent than her daughter on a similar occasion. An attempt by the defence to throw the guilt upon M'Leod failed, and Pritchard afterwards declared her complete innocence. After a five days' trial he was convicted and sentenced to death. Before his execution—the last public one in Glasgow—he confessed his crimes, which he attributed to "the use of ardent spirits" ; but there is no evidence of his intemperance : he was too cold-blooded and crafty for that. He retained to the last the cloak of religious hypocrisy which he had worn so long. "I shall meet you in Heaven," said he to the Rev. Dr. Bonar, whom he had asked to pray with him. "Sir," retorted the divine, "we shall meet at the Judgment Seat." On 23rd November 1910, in connection with the demolition of the old South Jail, the courtyard, in which were buried the bodies of executed criminals, was excavated, and among the remains exhumed were those of Dr. Pritchard. Oppor-

tunity was taken to examine the skull, a "note" on which, with interesting photographs, was published by Mr. Edington in 1912.(*a*)

Eugène Marie Chantrelle, teacher of French and amateur physician, was a villain of a ruder type than Pritchard.(*b*) While employed at Newington Academy, Edinburgh, in 1868 he seduced one of his pupils, a girl of fifteen named Elizabeth Dyer, whom her family, saving her reputation at the cost of her happiness, compelled him to marry. From the first Chantrelle systematically ill-treated his wife, several times she fled from his cruelty to her parents' home, but for the sake of her children she as often returned to her tyrant. As his infidelities were frequent and notorious she could readily have obtained divorce; there again, however, she sacrificed herself to her children's welfare. So for ten years the unhappy woman patiently endured her cross. Chantrelle's teaching connection suffered from his profligate and drunken habits, engagements grew scarce, he was in debt and pressed for money, and in October 1877 he insured his wife's life for £1000 with the Accident Assurance Association, having previously ascertained from another office what constituted "accidental" death. This step was against the lady's wish: she told her mother that she was afraid of the consequences, for her husband had more than once threatened to take her life; he was half a doctor, and boasted that he could poison her without detection. The Chantrelles occupied the two upper flats of a common stair, No. 81A George Street, Edinburgh. On New Year's Day 1878 Madame Chantrelle gave the servant a holiday, remaining herself at home with the children. On the maid's return at 10 P.M. Chantrelle told her that his wife, being unwell, had gone to bed. She found her mistress in the back bedroom, "very heavy looking," with the baby beside her. A tumbler of lemonade stood by the bedside,

(*a*) *Glasgow Medical Journal*, February 1912.
(*b*) *Trial of E. M. Chantrelle*, edited by A. Duncan Smith, 1906.

and Madame asked her to peel an orange for her, which was done. Chantrelle slept in the front bedroom with the two older children. Next morning when the maid rose at seven she heard moaning from her mistress's room, the door of which was partly open and the gas unlit—both contrary to custom. Entering, she saw Madame lying unconscious in the bed, with stains as of vomiting upon the pillow. She called her master, who was in his own bed with the three children. He went with her to the back room and attempted to rouse his wife; the maid advised sending for a doctor. Chantrelle said he heard the baby crying and told her to attend to it; she left the room, but finding the baby still asleep, at once returned, and saw Chantrelle in the act of coming away from the window. "Don't you smell gas?" he asked, and though she did not then do so, immediately afterwards she noticed a slight smell, so she turned off the gas at the meter. Dr. Carmichael was summoned; when he arrived the room was redolent of gas, and Chantrelle explained that there had been an escape. The doctor sent for Dr. (afterwards Sir Henry) Littlejohn, City Medical Officer, "to see a case of coal-gas poisoning," and the patient, in a comatose state, was carried into the front room. Dr. Littlejohn came; he thought she was dying and advised her removal to the Royal Infirmary. Both doctors, in view of the smell and of Chantrelle's false statements, believed her to be suffering from gas. At the Infirmary, Dr. Maclagan, into whose ward she was taken, diagnosed the case as one not of gas, but of narcotic poisoning, probably opium, and it was treated accordingly. At 4 P.M. the patient died without having regained consciousness. Medical and chemical examinations of the body negatived the suggestion that death was due to gas poisoning, but failed to detect the narcotic poison indicated by the symptoms. Fortunately for the ends of justice, in certain stains of vomited matter upon the nightdress and bedclothes Drs. Maclagan and Littlejohn, as well as Professors Crum Brown and Fraser, established by separate

analyses the presence of opium, apparently in the form of extract, together with orange pulp. Chantrelle was arrested; although his judicial declaration occupied thirteen hours, the only important point was his statement that he left his wife in her usual health at 1 A.M.; for the rest, the portentous document was devoted to gross and baseless slander of the dead woman. On his trial at Edinburgh in May 1878, for murdering his wife by opium, in orange or lemonade, Lord Moncreiff presided, the Lord Advocate (Watson) appeared for the Crown, and Mr. Trayner for the pannel. The defence maintained that the symptoms and morbid appearances were consistent with gas poisoning, and that the stains were not proved to be the result of vomiting; and indeed, upon the medical evidence alone, the Crown might not have been certain of a conviction. But it was proved that behind the window shutter, from whence, before there was any smell of gas, Chantrelle had been seen by the maid to come, was a disused gas pipe, freshly broken through by wrenching, which, had it been for any time in that condition, must have filled the house with gas; and that while Chantrelle denied that he knew of the pipe being there, he had in 1876 been present when it was repaired, and discussed its position with the workman. It was further proved that on 25th November 1877 Chantrelle bought from a local chemist a drachm of extract of opium, as to the application of which there was no evidence, though a similar purchase by him in 1872 was found in his repositories; also that he had stated to various witnesses that before going to bed he gave his wife a bit of orange and some lemonade, and took the baby away as she was feeling unwell. The jury unanimously found him guilty, and the prisoner, in a rambling statement from the dock, demolished the whole fabric of the defence by arguing that his wife had taken opium voluntarily, and that someone had rubbed the poison on her linen in order to incriminate him. He was condemned to death, and notwithstanding strong efforts made to obtain a reprieve, sentence was duly carried out,

the convict refusing to confess his guilt. Had Chantrelle been content simply to turn on the gas that night in his wife's room it is probable that, so far as her case is concerned, he might have "cheated the woodie"; but it was understood at the time that in the event of an acquittal the Crown was prepared to indict him upon another capital charge.

After M. Chantrelle's enforced retirement from practice the art of poisoning in Scotland sensibly declined. Since his suspension no other artist of the same school has been, if I may pursue the metaphor, hung on the line; the present generation furnishes but few performers, whose work, in quantity inconsiderable, lacks the boldness of design and finish of execution which distinguish that of the older masters.

An unsatisfactory case was that of John Webster, landlord of Newton Hotel, Kirriemuir, tried at Edinburgh in February 1891, for the murder of his wife by arsenic.(*a*) In the beginning of August Mrs. Webster had been suddenly attacked with vomiting and persistent thirst, and died after three days' illness, attended by her husband. A doctor, called in, thought her suffering from gastritis, and certified accordingly. Four months after interment the body was exhumed; it was unusually well preserved, there were no signs of natural death, and on analysis arsenic was found in all the organs examined. At the trial expert evidence to that effect was given by Dr. Littlejohn, Mr. Falconer King, and Professor Crum Brown; death was due to arsenic, administered in repeated doses. An error in the chemical report as to the amount probably contained in the body was corrected by the medical witnesses from subsequent experiments. When the diet was first called the Lord Advocate asked for a postponement, owing to the disappearance of his principal witness, James Peacock, barman at the hotel. Before the second trial Peacock was discovered drowned in a reservoir, so his testimony was lost

(*a*) *Scotsman*, 18th, 19th, and 20th February, 1891.

to the Crown. It was proved that the couple had been on bad terms, and that Webster had insured his wife's life for £1000. The bed linen used by the deceased had been partially washed before being sent to the laundry. No arsenic could be traced to the prisoner's possession, nor any attempt on his part to procure it. The defence contended that the presence of arsenic in Mrs. Webster's body was due to her having taken Fowler's Solution; she had consulted in June an unknown medical man, who gave her medicine which "might have been Fowler"—a likely prescription for the ailment she admittedly had; but, on the other hand, it was not proved that she ever took any, and none was found in the house. Taylor, by the way, states that there is only one recorded case (1848) in which Fowler's solution has destroyed life.(*a*) After a three days' trial the jury returned a verdict of not guilty, and the prisoner was discharged.

On 19th November 1906 Mr. William Lennox, Old Cumnock, Ayrshire, received by post an anonymous gift of shortbread, roughly covered with icing, in a parcel containing a card inscribed, "With happy greetings from an old friend." Four persons in the house who tasted the shortbread became seriously ill, with symptoms of strychnine poisoning; one, the housekeeper, Miss M'Kerrow, died next day. Strychnine was ascertained to be the cause of death, and enough of that poison to kill several people was found in the icing. Thomas Mathieson Brown, whose wife was a niece of Mr. Lennox, was arrested in connection with the crime.(*b*) At the pleading diet, the Procurator-Fiscal produced two medical certificates that the accused was of unsound mind and incapable of pleading to the indictment. It was insisted for the prisoner that he should be allowed to plead not guilty; and the Sheriff reserved the matter for the consideration of the High Court. At the second diet on 18th March 1907, the Solicitor-General left it to

(*a*) *Medical Jurisprudence*, 1910, ii. 472.
(*b*) Adam's Justiciary Reports, v. 312.

the Court to order an investigation as to the prisoner's mental condition. The defence objected, and moved that he should be discharged, as he had not been called upon to plead at the first diet. The Court repelled the motion, and found that it was inexpedient to hold a preliminary enquiry into the pannel's state of mind. He then pleaded not guilty, and the trial proceeded. Evidence was led to prove that the pannel had bought an ounce of strychnine from a Glasgow chemist, and that the card and the address on the parcel were in his handwriting. Expert testimony was given to the effect that he had suffered for years from chronic epileptic insanity. The Lord Justice-General (Dunedin) directed the jury to answer the following questions:—(1) Is the prisoner now insane? if not, (2) Did he send the poisoned cake? and if so, (3) Was he insane at the time? The jury, by a majority, found the pannel to be then insane; he was accordingly ordered to be detained during His Majesty's pleasure. Thus the question of his guilt or innocence remained undecided.

A remarkable case which, owing to the self-effacement of the criminal, was never brought to trial occurred at Dalkeith, Mid-Lothian, in 1911.(*a*) On 3rd February of that year Mr. and Mrs. Hutchison, Bridgend, on the occasion of their silver wedding, entertained a party of friends at a whist drive. After supper coffee was brought in by John Hutchison, the son of the house. Of the eighteen persons present he and three of the guests took none, the other fourteen, including John's fiancée, drank the coffee, were immediately seized with violent sickness, and quickly became prostrate. Medical aid was summoned, and after treatment all but two—Mr. Hutchison and Mr. Clapperton—recovered. Arsenic was ascertained to be the cause of death, and that poison was traced in the remains of the coffee as served. John Hutchison, who had been prompt in administering an emetic to the sufferers, attended

(*a*) *Dalkeith Advertiser*, 9th, 16th, 23rd February; 2nd March 1911.

the funeral of the victims. He was formerly assistant to his uncle, a chemist in Musselburgh, but though only twenty-four had retired, as appeared, upon his winnings on the Stock Exchange, and his motor car was a feature of the district. On the 14th Hutchison left Dalkeith, ostensibly to visit friends in Newcastle. Meantime the authorities discovered that a bottle containing arsenic was missing from the chemist's shop where he had been recently employed; there were other suspicious circumstances, and a fortnight after the tragedy a warrant was issued for his arrest. Descriptions and photographs of the wanted man were published broadcast; he was tracked to London and from thence to Guernsey, where on the 20th he was discovered in a boarding-house under an assumed name. Questioned by a police-sergeant, he denied his identity and ran upstairs to his bedroom, pursued by the officer. Before the latter could close with him he swallowed the contents of a small phial which he had about him, and fell dead on the spot. An inquest was held, when it was found that death was due to prussic acid. Hutchison, so far from being a man of means, was heavily in debt, and had given way to drink; if there was any financial motive for the commission of the crime it was not disclosed, nor was any evidence as to his mental condition made public.

The next crime to be considered was admittedly the work of a mind deranged. William Watson and his wife were charged at Glasgow in October 1912 with conspiring to murder their children, and with murdering two of them, by cyanide of potassium.(*a*) The wife pleaded insanity in bar of trial, and upon expert evidence by Drs. Devon and Parker she was ordered to be detained during His Majesty's pleasure. In the husband's case it was proved that he, being a photographer, had obtained four ounces of cyanide, which his wife had persuaded the children to take. After

(*a*) Official Shorthand Writers' Notes.

medical evidence that Watson had long suffered from fixed delusions by which his mind was still affected, the judge (Lord Johnston) stopped the case, directing the jury to say whether or not upon the evidence the prisoner was of sound mind; they found that he was insane, and he was ordered to be confined accordingly.

The latest—it were sanguine to suppose the last—poisoning case tried in Scotland is that of John Saunders, gamekeeper, Gosford, Haddingtonshire, at Edinburgh in April 1913, for attempting to poison his wife.(*a*) It appeared from the evidence that Mrs. Saunders, who had long been in a neurotic condition, began to complain of her food having a strange taste, and displayed after eating symptoms suggestive of poisoning. She was attended by Drs. Gamble and Millar, who treated the case as one of hysteria. To the nurse and others Mrs. Saunders indicated certain articles of food and drink which she said had made her sick, and these were secured for examination. On analyses by Professor Harvey Littlejohn of marmalade, cream, and biscuit, the presence of strychnine was detected —the total quantity recovered being ·323 of a grain. There was no proof of administering or tampering with food by the prisoner, or of his ever having had strychnine in his possession, nor was any motive for the crime alleged. For the defence, Drs. Martine and Gulland testified that Mrs. Saunders suffered from hypochondria, and Sir Thomas Clouston stated that an hysterical woman would do anything to excite sympathy—the theory of the defence being that the symptoms were simulated, and the poison introduced by Mrs. Saunders herself. The prisoner, who bore the highest character, gave evidence in his own behalf; he had patiently endured for many years his wife's peculiar humours, and had never given or sought to give her poison. The jury, by a unanimous verdict of not guilty, acquitted him of the charge.

(*a*) *Haddingtonshire Courier*, 25th April 1913.

So much for the past; with regard to the future a recent authority, in an entertaining chapter entitled "Comfortable Words about Poisoning," remarks:—"Everything goes to show that the poisoner of the future will not be a very dreadful person—at any rate, will not be a more dreadful person than the poisoner of the present, unless we credit in the future all the scientific acumen to the villain, and none to those engaged upon the side of justice. For this one dilemma will always remain to the poisoner. If he is ignorant entirely, sheer ignorance will hang him; while, by as much as he knows anything, by so much will he be a marked man, upon whom suspicion will fall."(*a*)

In concluding this rapid review of four centuries of Scottish poisoning as recorded by various authorities, I am fully conscious of the injustice done to the more important and interesting cases by the compression which my scheme entails; yet I venture to hope that such a survey, bringing together by name, date, and salient features the principal trials of the period covered, may, despite its obvious disadvantages, subserve some useful end.

(*a*) *Physic and Fiction.* By S. Squire Sprigge, London, 1921, p. 285.

POISON AND PLAGIARY

POISON AND PLAGIARY

"It happens, unfortunately, that great crimes, leading to the discussion which they must necessarily do, are often followed by the committal of the same offence on the part of others; and you will see how that comes out in a remarkable manner in this case."

—Charge of the Lord Justice-Clerk.

MENTION of the year 1857 reminds the general reader —that well-informed person—of the dark chapter in British history known as the Indian Mutiny. For the limited class versed in Scots criminal annals its association is with that most attaching of our *causes célèbres*, the trial of Madeleine Smith. But even as the tale of the great revolt surpassed in public interest at the time many events otherwise sufficiently notable, so was the lustre of certain contemporaneous malefactors quenched in the exceeding brightness of the young lady of Blythswood Square. Between that brilliant damsel and the "hero" of the judicial drama which it is here proposed briefly to recall there would seem at first sight to be nothing in common, except their respective occupancy of the dock upon a charge of murder; yet the baleful influence of her example upon the fate of the obscure country tailor is a curious and suggestive fact.

Apart, however, from any borrowed light, the Eaglesham poisoning case is noteworthy as being the first trial in Scotland for murder by hydrocyanic or prussic acid, only two other cases of the criminous employment of that drug having previously occurred in England. The first of these was the trial of John Donellan on 30th March 1781 at Warwick Assizes, before Mr. Justice Buller, for the murder of his wife's brother, Sir Theodosius Boughton, at Lawford Hall, Warwickshire; the second that of John Tawell on 12th March 1845 at Aylesbury Assizes, before Mr Baron Parke (Lord Wensleydale), for the murder of Sarah Hart at Salthill, Slough, near Windsor.

Donellan, a cashiered army captain who had married money and, in the popular phrase, hung up his hat, was convicted of administering to his brother-in-law, a dissipated young baronet of twenty, in the medicine which the lad was taking for a specific ailment precociously contracted at Eton, a distillation of cherry-laurel leaves, commonly called laurel water, the alleged motive being that by his death his sister, Mrs. Donellan, would benefit to the tune of £2000 a year. The verdict has been disputed. The evidence was purely circumstantial; the scientific testimony, as usual in those days, was regrettably vague, and the sole proof of the presence of any laurel water in the case at all was the statement of Lady Boughton that her son's medicine smelt like bitter almonds. Four physicians testified to their belief that Sir Theodosius died from the effects of poison, but, for the defence, the celebrated Dr. John Hunter maintained that no such inference could be drawn from the symptoms and post-mortem appearances; he attributed the death to natural causes.(*a*)

Tawell, a benevolent and godly member of the Society of Friends, famed for his acts of charity, was convicted of poisoning with prussic acid, in a bottle of Guinness's stout, his devoted and unselfish mistress, to rid himself of the expense of a small quarterly allowance made to her, he being a married man in easy circumstances. His case, as we shall see, is in certain respects interesting with reference to that which we are about to consider.(*b*)

In the village of Eaglesham, in the shire of Renfrew, some nine miles from Glasgow, there stood at the date in question a two-storey tenement, access to which was had by a close or entry common to the whole building. Upon the ground floor were two one-room houses, separated by the close which ran through the tenement to a garden behind,

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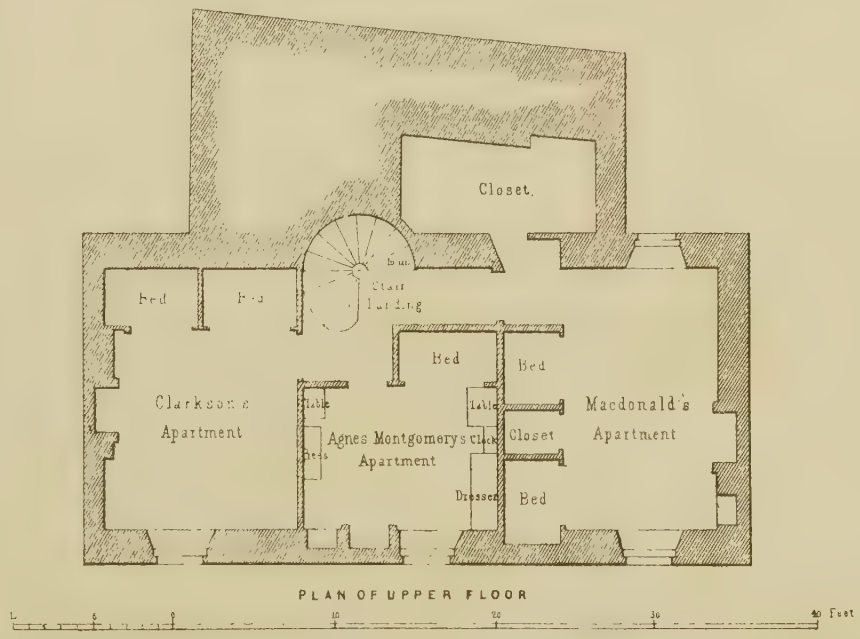
(*a*) *The Trial of John Donellan, Esq.* Taken in shorthand by Joseph Gurney, London, 1781.

(*b*) *Reports of Trials for Murder by Poisoning.* By Lathom Browne and Stewart, London, 1883.

PLAN OF THE HOUSE IN THE VILLAGE OF EAGLESHAME OCCUPIED BY THE DECEASED AGNES MONTGOMERY & OTHERS.



Plan of Agnes Montgomery's House.

(From the original produced in Court.)

and respectively occupied by James Watson, tailor, and Hugh Montgomery, carrier. The upper floor, reached from the close by a turnpike stair, consisted of three adjoining rooms, in which were accommodated a like number of tenants, namely, David Clarkson, mole-catcher, James Macdonald, joiner, and Agnes Montgomery, employed as a "reeler" in the local cotton-mills. Her room was the middle one above the close. Agnes, the sister of Mrs. Watson and niece of the carrier, was, according to the evidence, a hale young woman of twenty-seven, respectable, of a happy disposition, and powerful physique. She maintained herself on her earnings at the mill, supplemented by a monthly allowance of £2 from a sailor brother. Since June 1857 there had lived with the Watsons as a journeyman tailor a man calling himself John Thomson, aged twenty-six, a native of Tarbert, Argyllshire. Eaglesham would have been surprised to learn that the stranger within its gates was in fact, as afterwards appeared, one Peter Walker, an ex-convict, sentenced in 1853 to seven years' transportation for stealing £22 from his employer. Adding insult to injury, he had applied the proceeds of the theft to winning the young affections of his master's daughter. When he returned to Scotland on ticket-of-leave Peter Walker, modestly sinking his identity in an alias, was known to his new associates as Jack Thomson. He admired Agnes Montgomery and had offered her marriage, but the girl, who described him to her relatives as a liar and a blackguard, declined his proposals. In the preceding August she and a friend, Janet Dollar, had in a double sense thrown cold water on his suit, with reference to which attention he said he would be damned but he would be "up to them" for that. The acquaintance temporarily ceased, but later Jack and Agnes appeared to be on friendly terms, and it was his occasional habit to visit her of a Sunday afternoon.

On Sunday, 13th September 1857, Agnes Montgomery was in her usual good health and spirits. She went to

church twice, forenoon and afternoon, with her friend Miss Dollar, returning to her own room at the close of the second service, shortly after four o'clock. Having broken coals in order to kindle her fire in view of the approaching tea hour, Agnes went downstairs to the entry, where she stood gossiping for half an hour, first with her sister, Mrs. Watson, and afterwards with a friend named William Young. It was her habit, on leaving her room, to lock her door and take the key with her. About ten minutes to five Thomson, who had been having his tea with the family of his employer, left Watson's house, and passing Agnes and Young in the entry, went up the turnpike stair to the flat above. Agnes then went upstairs after him, and Young turned into Watson's. Janet, Mrs. Watson's three-year-old child, was not then "in"—she was playing about the stair. At five o'clock Miss Dollar, who lived hard by, sent two little girls, aged nine and eight, with an invitation to Agnes to go for a walk with her. The children gave the message, and Agnes replied that she would go. They saw that Jack Thomson and little Janet were then in her room and that the fire was burning brightly. Agnes asked the girls to bring her a bottle of beer from Dollar's—the father of her friend had a licence; this they duly did, and delivered it unopened to Agnes. Jack and the child were still with her when they left the beer.

Agnes Montgomery's next-door neighbours were, as it chanced, at home that afternoon—Clarkson, in his room on the west of hers, and Mrs. Law (who lived with her son Macdonald) in that on the east. The doors of both were open. About ten minutes past five Mrs. Law heard a heavy fall in Agnes's room, followed by "a sort of rumbling—feet rustling along the floor." In a minute or two she heard someone leave the room, lock the door, take out the key, and go softly downstairs. She attached no importance to the matter at the time, thinking that the person was Agnes herself. Clarkson, sitting by his fireside, commanded across the landing a view of Agnes's door. About ten minutes to

five he saw her enter her house, accompanied by Thomson and the child Janet. She opened the door with her key, and they all went in together. He next saw the two girls call, and return later with the beer. A quarter of an hour after they left he heard "a great rumble and a desperate thrash on the floor," which, mentally deprecating such conduct on the Sabbath day, he attributed to some horse-play on the part of the visitor. It is noteworthy that no cry or scream was heard either by Mrs. Law or by Clarkson. In four or five minutes he saw Thomson come out with the little girl, lock the door on the outside, and go downstairs. Almost immediately Thomson returned alone and stood listening for a moment at the locked door with his ear against it, after which he went again downstairs. Clarkson himself soon after went down for water from the well in the garden, and on coming back a few minutes later heard a great moaning, which he thought was made by Mrs. Montgomery, who was lying ill in the room below.

Mrs. Macdonald also had been at the well, and returning to the house, met Jack and little Janet in the garden, near a rosebush. He remarked that it was a fine day and that he was going to give the child some flowers. She thought his face looked white. Mrs. Watson met her in the entry; their attention was attracted by the strange moaning, and the two women went up together. On reaching the landing they found that "the moans were from Aggie's." Her door was locked, and their cries and knockings elicited no response from within. Mrs. Law and Clarkson, alarmed by the noise, had joined them, and it was decided to force the door, but someone thought of trying Clarkson's key; it opened the lock and they all rushed into the room. Mrs. Watson on entering noticed a peculiar smell like bitter almonds, which affected her throat and nostrils. She thus describes the scene: "Aggie was sitting on a chair before the clock, her head leaning to the right on the table, her right hand hanging down, the left in her lap. A thick slaver was coming from her mouth, and her eyes were staring. She was alone."

Seeing in this dreadful state the poor girl whom half an hour before she had left in perfect health, her horrified sister, attempting to rouse her, cried, "Aggie, Aggie! what's this? Have ye been taking anything?" But Aggie was to speak no more in this world. It is obvious that the idea of natural illness was in the circumstances out of the question and occurred to no one. The fire was burning brightly, the room was in perfect order, nothing was visible which could account for her condition; but the key of the door was missing.

Meanwhile, at twenty minutes past five, two friends of Thomson, named Fulton and Muir, called for him at Watson's house. Watson said he was "either in Aggie's or down the green." They accordingly went upstairs, found her door fast, heard the groans, and then went down to the garden, where they met Jack, to whom they mentioned the strange sounds in the locked room. He gave "a bit smile" but made no comment. They were joined at the instant by Mrs. Macdonald, who said Aggie was very ill and someone must go for the doctor. Thomson volunteered to do so. He ran across the public green to Dr. Scott's house, some 200 yards distant, asked the doctor to come at once, and, running back across the common, was seen by two separate persons to stop at a certain tree, stoop down to the ground for a moment, and then run on again. On his return he remarked to others in the room that he had felt so faint coming back he had to lean against a tree. Dr. Scott reached the house at half-past five. He thought the case one of apoplexy, and attempted bleeding but without success. By his directions the patient was put to bed, Jack willingly taking off his coat to help. Toddy was exhibited to no effect, and the doctor left, the case being, in his opinion, hopeless. By six o'clock Agnes Montgomery was dead; the duration of the illness, so far as could be ascertained, being under fifty minutes. Dr. Scott duly certified the cause of death as apoplexy.

At the "coffining" next day Thomson, who was present,

said it was a serious call that Aggie had got, and he was very sorry—he never saw a girl he thought more of. Her sister, Mrs. Young, remarked, "You would be the last person that saw her alive [*i.e.* conscious]?" to which he replied, "I believe I was," adding that, when he left her, she was breaking sticks to light her fire. He also told his friend Fulton that he had been with her for a quarter of an hour, but noticed nothing wrong. Whether or not the sudden fate of Agnes Montgomery aroused at the time among her friends a suspicion of foul play does not appear; as simple country folk, to whom the idea that she had been deliberately done to death would hardly occur, it is improbable that they presumed to question the accuracy of Dr. Scott's certificate. So with the burial of the dead girl on Thursday, 17th September, the village tragedy was to all appearance played out.

A week later, Friday the 25th, Jack Thomson left Eaglesham. The order of his going, though irregular, was unconnected with the recent sensation. A letter containing money had disappeared; Watson suspected Jack of stealing it, and advised him to go away. He did not propose to prosecute, but refused any longer to employ him. Three days before her death Agnes told her sister Mrs. Young that Watson had missed money and would get his eyes opened as to Jack yet. She stated to Janet Dollar that she blamed him for taking money out of her sailor brother's pocket, and her last word to her sister Mrs. Watson had reference to a missing loaf, which was found hidden in his bed. That he had not changed his nature with his name is evident; John Thomson's views of the distinction between *meum* and *tuum* were as imperfectly developed as those of Peter Walker.

At seven o'clock that night he set out to walk to Glasgow. On the road he called at a spirit dealer's in Clarkston and bought a pint bottle of whisky, which he took away with him. Prior to his Eaglesham period Thomson had lodged with a respectable couple named

Mason, who lived in John Street, Glasgow, and at their house he now presented himself half an hour before midnight. Mason was in bed. The visitor explained that he had come back to occupy his former lodging, and to celebrate the occasion he poured out from his bottle a glass of whisky, which he offered to his landlord. Mason barely tasted it—the stuff was bitter, sourish, and he felt his face instantly flush; fortunately he declined to drain the cup. The visitor, remarking that it was the best Paisley whisky, then filled a glass for Mrs. Mason, who, having swallowed a third of it, felt a bitter taste, presently became giddy, saw double, and lost the power of her limbs. "Oh, John, that's not good whisky!" cried she; but Thomson repeated his assurance that it was the best Paisley produced. She continued very ill for several days but ultimately recovered. Thomson on his previous visit had appropriated some clothes belonging to a fellow-lodger, and next morning Mason left the house to communicate to the police the fact of the prodigal's return. During her husband's absence the visitor went up to inquire for Mrs. Mason, and pressed her to take another glass of the Paisley blend. She refused, telling him how ill she had been in the night; whereupon he observed that he himself drank what she had left and was none the worse for it. The conversation was interrupted by the arrival of the police and the removal of Mr. Thomson to prison. He was, however, set at liberty on Tuesday the 29th, in what circumstances we do not know.

On that date, four days after Jack's departure from Eaglesham, little Janet, playing on the floor at her mother's feet, said something about Aggie's death which applied the spark to Mrs. Watson's slumbering suspicions. She questioned the child, and as the result of her answers Mrs. Watson, having conferred with the neighbours, set out next day for Glasgow. The Court of Justiciary, then upon the Autumn Circuit, was sitting in that town. Mrs. Watson went to the Court house and informed a detective officer that she believed John Thomson had murdered her sister.

By a curious chance the very man of whom she spoke was then in Court, having, as appears, a liking for the law; she pointed him out to the officer, who arrested him on the spot.

On 1st October the prisoner was brought before the Sheriff-Substitute and emitted a declaration in regard to the charge of murder. In this, *inter alia*, the accused declared that he did not enter Agnes Montgomery's house on the day of her death, and that he never employed any person to buy prussic acid. In the course of their inquiry into the case the authorities lighted upon the curious incident which took place at Mason's house on the night of the prisoner's arrival from Eaglesham, as the result of which, on 21st October, he again appeared before the Sheriff-Substitute and emitted a second declaration with reference to the further charges of attempting to poison Mr. and Mrs. Mason. Upon this examination he declared: "I bought no whisky on said night, either in Eaglesham or on my way from it to Mason's house; and I had no whisky with me when I went to Mason's house. I did not give or offer any whisky to Mason or his wife." He repeated that on no occasion had he ever sent any person to buy prussic acid, adding, "I don't know what it is." How the facts stand with regard to the truth of these declarations we shall see when we come to the evidence led at the trial.

The case against him being duly completed, on 22nd December 1857 John Thomson, *alias* Peter Walker, was placed at the bar of the Circuit Court of Justiciary at Glasgow to answer the charges brought against him.(*a*) The judge was the Lord Justice-Clerk, John Hope, who in the preceding July had presided at the trial of Madeleine Smith. There appeared for the Crown Messrs. F. L. Maitland Heriot and Andrew Rutherfurd Clark, Advocates-Depute, the pannel being represented by no less than four counsel, namely, Messrs. Alexander Moncrieff, William

(*a*) *Report of the Trial of John Thomson* alias *Peter Walker*. By Hugh Cowan, Advocate, Edinburgh, 1858; Irvine's Justiciary Reports, ii. 747; *Lancet*, 2nd January 1858.

E. Gloag, A. Dunn Pattison, and James Mure, Advocates. Though taking no prominent part in this case, Mr. Rutherfurd Clark was five years later to distinguish himself by his defence of Mrs. M'Lachlan on her trial for murder in the same Court; he also in 1865 defended Dr. Pritchard in similar circumstances, when even his ability could not avail to save that villainous physician's life. Among the counsel for the defence will be noticed the name of the future Lord Kincairney. Moncrieff was junior counsel for Madeleine Smith.

The indictment is peculiar in respect that the pannel was charged with the two distinct crimes of murder and of attempt to poison, not, as in the case of Miss Smith, committed against the same person, nor, as in that of Katharine Nairn, where the separate acts set forth, in the words of Hume, "have a natural relation and dependence as parts of one foul and nefarious story."(*a*) Counsel for the pannel, however, neither objected to the indictment nor moved for separation of the charges, though had he done so, as appears from an observation of the Justice-Clerk, his Lordship would have sustained the objection, and proceeded with the first charge alone. The charges were (1) on 13th September 1857 administering to Agnes Montgomery in beer a quantity of prussic acid, in consequence whereof she died and was thus murdered by him; (2) on 25th or 26th of that month administering to Agnes Stenhouse or Mason in whisky a quantity of prussic acid with intent to murder her or do her grievous bodily harm, whereby she suffered severe illness and was put in danger of her life; and (3) administering on that date the same poison to Archibald Mason with similar intent, whereby he was injuriously affected in his health and person. The last two charges were laid alternatively at common law or under the statute 10 Geo. IV. cap. 38. Annexed to the indictment was an inventory of fifty productions, and a list of ninety-one witnesses for the Crown. The diet having been called

(*a*) *Commentaries on the Law of Scotland respecting Crimes*, 1819, ii. 166.

and no objection stated, the Lord Justice-Clerk found the libel relevant; the pannel pleaded not guilty, a jury was empannelled, and the trial proceeded.

The first witness of importance for the prosecution was Mrs. Watson, who spoke to the circumstances of Agnes Montgomery's death as already mentioned. She described in great detail the symptoms exhibited by the dying girl—insensibility, foaming at the mouth, clenching of the teeth and hands, the eyes fixed and staring, the face red and swelled "like to burst." She asked the doctor if he thought Agnes had taken anything; he said he didn't know, and seemed unable to judge. She entered the room at twenty-five minutes past five, and death occurred about thirty-five minutes later. On Saturday the 12th, Thomson asked her for pen and ink. He wrote a note which he gave to the carrier's boy, who, she understood, was to bring him something from Glasgow, as she had seen him do before. After Aggie's death no money, except twopence, was found in her room. She identified a key produced as that of the dead girl's door; she knew it well.

James Watson, her husband, spoke to seeing the pannel and little Janet in the garden at twenty minutes past five. After Thomson had left the garden Watson noticed upon the walk between the house and the well fragments of broken glass, apparently crushed into the gravel by a foot, the mark of which was visible. The glass was thin, that of a small phial. He showed it to Mrs. Clarkson, who was with him, and then threw it away. He remembered on 13th or 14th July last his wife reading aloud from a newspaper report of Madeleine Smith's current trial the evidence of that young lady's unsuccessful attempt to purchase prussic acid. Thomson was present at the time and seemed much interested by the incident.(*a*) With

(*a*) It will be within the reader's recollection that prior to her repeated acquisition of arsenic Madeleine had sent her father's page boy to a neighbouring chemist with a "line" asking him to give bearer half an ounce of prussic acid, which the chemist wisely declined to do.

reference to this passage, Thomson inquired what kind of stuff prussic acid was; whereupon Watson replied that if Miss Smith had given it to L'Angelier, he could not have left her company alive. Apparently struck by the rapidity with which the poison was said to act, Thomson remarked that it was surely strong stuff, and asked where it could be bought; Watson answered, in an apothecary's, but no one except "likeness-takers" could get it.

From the evidence of other witnesses it appears that the academic interest in prussic acid aroused by this conversation stimulated Thomson to further inquiry touching the properties and effects of the drug. Within a week, 19th July, he called upon Watson's brother, a photographer in Portugal Street, Glasgow, and broached the subject of Madeleine Smith buying prussic acid. The "likeness-taker" remarked that it was a very active poison, and as such would not have answered her amiable purpose —L'Angelier, had he taken it, would have dropped down dead at her feet. A painter named Arneil, who took part in this conversation, observed that prussic acid would have suited Miss Smith better than arsenic, as it was not so easily discovered; on the other hand, it was more difficult to obtain. Watson said both could be got with equal facility, being sold as medicine by all druggists—by Mr. Hart, for instance, a Glasgow chemist. Thomson listened attentively, turning from one speaker to the other, and putting in a word occasionally. The question of the quantity required by Miss Smith arose, a newspaper was sent for, and they found she had proposed to purchase sixpence-worth. Mr. Thomson terminated the discussion by expressing his strong opinion that Madeleine Smith should be hanged, which, in view of the benefit he derived from her experience, was not only ungallant but savoured of ingratitude.

Mrs. Macdonald corroborated Mrs. Watson as to the discovery and appearance of the dying girl. On entering the room she noticed a sickening kind of smell which

affected her nostrils and throat. She described it as "blowing-like" from Agnes. On 5th November, in presence of the superintendent of police and the Crown doctors, some beer mixed with prussic acid was spilt in her presence, when Mrs. Macdonald at once recognised the smell, "as sickening, though stronger." Mrs. Young stated that while attending Agnes during the illness she found below the dresser in the room a bottle, containing about two gills of beer, which she emptied out, as the bottle was required for hot water for the patient. An unwashed tumbler was found in the press by another witness. The grass at the foot of the tree on the common at which the prisoner, returning from the doctor, was seen to stoop, disclosed on research by the police and others a key, later identified as that of Agnes Montgomery's door. With the evidence of the neighbours concerning what they saw and heard on that fateful afternoon, and of the parties to the conversations regarding Madeleine Smith, the first day's proceedings closed.

When the Court met again on 23rd December the Advocate-Depute proposed to examine the little girl Janet Watson. The child alone could tell what happened in the room between the pannel and the deceased ; she was barely more than three years old, but he submitted it was for the jury to judge of the value of her evidence after seeing and hearing her in the box. The fact to which she would speak was one eminently within the comprehension of the child. A heavy fall was heard by others in the adjoining rooms, the child was proved to have been in the room with two persons whom she knew, and the question he proposed to ask was, Who fell? The Lord Justice-Clerk said that he was unable to admit her statement, this being a case of life and death. Its admission was a matter of discretion in the Court. If the child had made the statement at the time, it would have been in a different position, but sixteen days elapsed before she spoke. Something might have been suggested to her in the interval, and she was too

young to explain why she had not spoken sooner. The Advocate-Depute then proposed to ask the mother what was the statement so made by the child, but the Lord Justice-Clerk refused to admit the statement as part of the mother's evidence. Fortunately for the ends of justice the circumstantial evidence was so strong as not to require the direct evidence of Janet Watson to make it convincing; but his Lordship's ruling was in some quarters deemed wrong, the view being expressed that the whole case ought to have gone to the jury, and that the judge had no power arbitrarily to withdraw any part of it from their consideration.

On the conclusion of the trial there was published in the newspaper press, presumably by authority, the precognition of little Janet taken by the Crown: "Remember my Auntie Aggie. She took me to the kirk. I ken Jack (the prisoner). Was in Auntie Aggie's house on 13th September. I ken Janet M'Gregor. She brought a bottle of 'ginger.' (Her mother explains that the child calls anything in a bottle 'ginger.') Jack took out the cork and gied Aggie 'ginger.' She fell down, Jack put her in a chair and took me out. He had a nice little bottle in the garden and put his foot on it. Jack told me not to tell and he would give me a bawbee."(*a*) The precognition is interesting as showing the child's intelligence, and there is little doubt that the jury would have believed her statement.

John Ferguson, the Eaglesham carrier's boy, drove his master's cart to Glasgow on Wednesdays and Saturdays. On Saturday the 12th, the day before Agnes Montgomery's death, the prisoner gave him a "line" for something to get at Hart the chemist's, whose shop was at the corner of Virginia and Argyle Streets, Glasgow, telling him to keep the matter secret, and, if asked, to say "it was for a portrait painter." He gave the boy sixpence. Ferguson could not read, and showed the "line" to one Adam Gall, a friend to whom he gave a "lift" that day on his way to

(*a*) *Scotsman*, 26th December 1857.

town. The contents were as follows: "Sept. 1857.—Mr. Hart,—Please give the bearer 6d. worth of prussic acid, and oblige.—John Thomson." The writing was proved to be the pannel's. Ferguson duly presented the "line" at Hart's, and the assistant, Stirling, accepting the portrait-painting as a sufficient reason, gave him 2 drachms of Scheele's prussic acid in a glass phial. On the lad's return to Eaglesham at ten o'clock on Sunday morning the prisoner came to him at the stables, asked for the parcel, and told him not to tell anyone about it. He further said that he wanted the stuff to dye his hair black. On Wednesday the 23rd Thomson gave Ferguson a similar "line," telling him to get another supply as before. At Hart's the boy saw a different shopman, Young, who demurred to selling poison in such circumstances; but Stirling, being consulted, said the boy had got it before and might get it again. So another 2 drachms of prussic acid were dispensed. Both "lines" were destroyed by Stirling. The Lord Justice-Clerk, before that witness left the box, told him he ought to have the death of the girl on his mind all his life. Ferguson returned to Eaglesham on Thursday morning, and at ten o'clock Thomson came to the cart shed and got delivery of his parcel. He opened it, uncorked the phial, and touched his hair with the cork, telling Ferguson, if anyone asked what he had bought, to say twopence worth of lozenges. Next day Thomson left Eaglesham for Glasgow, where Mr. and Mrs. Mason were to experience the effects of this novel hair dye.

Several other witnesses were examined, from whose evidence the foregoing account is taken. There remains, however, the medical testimony, which may be mentioned briefly, as Mr. Hugh Cowan, who edited the trial, has prefixed to his report(*a*) exhaustive observations on the medico-legal points of the case. This, being the first of its kind in Scotland, naturally excited much interest in professional circles. The evidence of Dr. Scott, the only

(*a*) *Vide supra*, p. 129, *n.*

doctor who saw the girl alive, was regrettably vague, and displayed, in the words of the Lord Justice-Clerk, a strange want of recollection or observation. So far as it went his account of the symptoms agreed with those given by the other witnesses present. He thought at the time that death was due to apoplexy and certified it as such. The body of Agnes Montgomery was exhumed on 30th September—she died on the 13th and was buried on the 17th—and that day within the parish church of Eaglesham a post-mortem examination was made by Drs. Daniel and Walter M'Kinlay of Paisley, assisted by Dr. Scott. Dr. M'Kinlay, senior, had been a skilled witness for the prosecution at the interesting trial of Christina Gilmour for the murder of her husband by arsenic in 1844. Owing to the advanced stage of decomposition the doctors were unable to ascertain the cause of death, which, however, as they stated in their joint report, was neither from external violence, protracted disease, nor structural change in any of the important organs. Certain portions of the body were therefore removed for chemical examination. Dr. M'Kinlay stated that there was no appearance whatever of apoplexy; all the indications of death from that cause were absent. On opening the body a slight smell of bitter almonds was perceived. With regard to the subsequent analysis conducted by him and his son, they found unequivocal proof of the presence of prussic acid in the stomach. In view of the symptoms he had heard described, coupled with the results of the post-mortem and analyses, he had no doubt death was due to prussic acid. In the course of a long cross-examination by Mr. Moncrieff, Dr. M'Kinlay admitted that a patient who survived for forty minutes generally recovered under proper treatment. He had not expected to detect the acid at so long a period after death. He repudiated Orfila's theory in regard to the production of prussic acid in a dead body by decomposition. Dr. M'Kinlay, junior, concurred. Dr. (afterwards Sir Douglas) Maclagan, who had made an independent

analysis of other portions of the body, said that he obtained unequivocal proof of the presence of prussic acid in the spleen. In his opinion the case was a typical one of poisoning by prussic acid. In cross-examination by Mr. Moncrieff, Dr. Maclagan refused to accept the theory of Orfila. Each of the leading medical witnesses stated, as the result of an independent analysis of the contents of the whisky bottle left by the prisoner at Mason's house, that it contained such a proportion of prussic acid as to constitute a wineglassful of the mixture a fatal dose. At the conclusion of Dr. Maclagan's evidence the Court rose.

The last day of the trial, 24th December, commenced with the evidence of Professor Penny, who had given expert testimony for the Crown in the Madeleine Smith case. He confirmed generally the evidence of the other medical witnesses, approved the chemical tests employed, and, in cross-examination, negatived Orfila's theory, which he characterised as a mere assumption. This closed the case for the prosecution, and as no evidence was led for the defence, the Advocate-Depute addressed the jury. Directing their attention to the first question in the case—Did Agnes Montgomery die of poison?—he dealt with the symptoms exhibited by her, the duration of the illness, and the suddenness of the attack, all of which, he maintained, were characteristic of poisoning by prussic acid. On opening the body no morbid appearances were found to account for death, and the theory of the defence that the death was due to apoplexy was excluded. Then there was the odour of prussic acid perceived both in the room at the time and upon the post-mortem examination. Apart altogether from the result of the chemical analysis, the facts justified him in asking a verdict against the pannel. But prussic acid was found in the stomach by the two Drs. M'Kinlay, and in the spleen by Dr. Maclagan. All the medical men examined stated that the speculation or assumption of Orfila was unsupported by any evidence whatever. He therefore submitted that he had proved

beyond all reasonable doubt that Agnes Montgomery was poisoned with prussic acid. Did she commit suicide? Her character and disposition rendered that improbable; she had no motive to take her own life, nor, unlike L'Angelier, had she ever threatened to do so. She must, on swallowing the poison, have fallen at once insensible; she could not have raised herself so as to sit in the chair; no phial was found within her reach; and she was locked into her room from the outside. But in view of the pannel's whole conduct the idea of suicide was out of the question, and the fact that the Masons, at any rate, were not attempting suicide was upon this point decisive. Was she murdered by the prisoner at the bar? He had previous knowledge of prussic acid, derived from the conversations about Madeleine Smith; he sent secretly for it an order in his own handwriting; he was proved to have been in the room when the seizure occurred; he left her, locked her in, and returned to listen at the door. He admitted being the last person who saw her alive, and said she was then breaking sticks to kindle her fire, but it was proved that at the time the fire was burning brightly. The missing phial was found crushed on the path immediately after he had left the spot, the missing key was discovered below the tree where he was seen to stoop. He told Ferguson he wanted the prussic acid for a hair dye; in his declaration he denied that he ever got any at all, or that he even knew what it was. In Miss Smith's case there was some evidence to prove that her alleged purpose in acquiring arsenic—for use as a cosmetic—was possible, and that she had both heard and read of it as such. In this case there was no evidence of that kind. If the pannel gave a false reason, could there be any doubt what was the true one? With regard to the question of motive, the Advocate-Depute suggested that the pannel might either have desired to get possession of what money the girl had in the house, or, as she had rejected his advances and called him a liar and a blackguard, he might have been actuated by feelings of hatred and revenge.

Having reviewed the evidence concerning the Glasgow charges, counsel remarked that if the jury were satisfied of the prisoner's guilt upon these, they threw much light upon the Eaglesham charge, which really was the important one. Finally, he asked for a verdict of guilty on all three charges.

Mr. Moncrieff, for the defence, said that he was not bound to account for the death of Agnes Montgomery. Suicide was a possible, apoplexy a probable explanation, or there might have been some other undetected natural cause, but murder was the greatest improbability of all. The duration of the illness, if due to prussic acid, was unparalleled, and was new to the scientific world. They were left in the dark by the purely medical evidence; let them see how far they were enlightened by the chemical examinations. The Drs. M'Kinlay reported on the stomach a week after Dr. Maclagan. They found prussic acid clearly where he all but failed. They reported on the spleen three weeks before him, and they failed to find it where he was successful in his search. Having criticised the result of the analyses at great length, counsel maintained that there never was a case more favourable for the adoption of Orfila's theory than the present. The fact that the pannel knew the difficulty of getting prussic acid accounted for his secrecy and false statements. "As to how he used it or why he wished it, these are questions as to which, unfortunately, I can give you no light." Nor was he (counsel) bound to do so, the object of the inquiry being, whether the prisoner used the poison to murder Agnes Montgomery; if that was not proved, it was useless to speculate. The attempt to prove motive had utterly failed, but it was said there was opportunity. The conduct of the parties was unseen. On the evidence of two witnesses who heard certain sounds, they were asked to believe that the crime of murder was committed. Excluding all subsequent discoveries, the sounds themselves were worth nothing; they aroused no suspicion at the time. It was only an assumption on the

part of the witnesses that Agnes did not lock herself in. As for the key found at the tree, such keys were common—one was readily obtained to open the door—and someone might have put it there with morbid or malicious intent to fill a gap in the chain of evidence. The fragments of glass found in the path were of no importance against the prisoner. His conduct and demeanour before and after the death were, counsel contended, entirely inconsistent with guilt. The evidence with regard to the Glasgow charges was, he submitted, neither satisfactory nor conclusive, and was only used by the prosecutor to strengthen his case on the former charge. Finally, in a peroration more pious than forensic, Mr. Moncrieff besought the jury not rashly to seek to pierce the darkness in which Providence had seen fit to enshroud that case of mystery and doubt.

A London medical journal in commenting on the case praised the prisoner's counsel for having abstained from those assertions of personal belief in the innocence of his client so common south of the Tweed.

I have but space to glance at the charge of the Lord Justice-Clerk. In refreshing contrast to the summing-up delivered by his Lordship in each of the three great murder trials at which it was his lot to preside, namely, those of Mrs. Gilmour (1844), Dr. Smith (1853), and Madeleine Smith (July 1857), the fullest possible weight is allowed to facts proved against the pannel. Here, at least, the judicial mind was free from such "reasonable doubts" as unreasonably beset it in the cases mentioned, and his Lordship's plain presumption that the Crown had substantiated the truth of the charges recalls the forthright methods of his Draconic colleague, Lord Deas. Well for the gentle Christina, well for the ingenious physician of St. Fergus, well even for the elegant Miss Smith, that they encountered the Justice-Clerk in a different mood. The sophistries of the defence were brushed aside like cobwebs: "It is a rash thing to attempt to set a bound to man's malignity, or to suppose that, because your honest and innocent hearts cannot enter

into the motive of one committing such a crime, guilt must be excluded. We know not the depths of the depravity and malignity of the human heart, and numbers of desperate criminals would escape if we were to test things in this way, and to lay aside evidence as to matters of fact from our inability to understand what led the man to do the deed." Thus his Lordship to this jury, upon the apparent absence of motive. If they came to the conclusion, to which, as Dr. Penny had remarked, they were inevitably driven, that prussic acid was administered to the deceased, his Lordship was afraid they could not escape the painful result of the inevitable verdict merely because they were unable to find a motive. There was nothing in the previous history of the prisoner to render the commission of this crime highly improbable, but what they had to deal with were the facts of the case.

As these were too plain for misapprehension even by a jury, a unanimous verdict of guilty was returned, and the Justice-Clerk, remarking that the circumstances disclosed on the part of the pannel a hardness of heart which his Lordship could scarcely conceive, pronounced sentence of death. The judge, we read, was deeply moved, but the prisoner maintained to the last the stoical composure which he had shown throughout his three days' trial.

The execution took place at Paisley on the 14th January 1858, Calcraft officiating, in presence of an immense concourse of people. By the condemned man's request no religious service was held. Thomson, shortly after sentence, acknowledged his guilt, and gave as his motive a desire to possess himself of his victims' money: but the day before his death he confessed that he was driven to commit the crime by an influence for which he could not account, and that in his boyhood he had murdered a companion by pushing him into a quarry-hole near his native village.(*a*)

Though the story of Agnes Montgomery's fate, fearful

(*a*) *Edinburgh Evening Courant*, 29th December 1857; *Annual Register*, December 1857, p. 255.

as it is, admittedly lacks those dramatic and mysterious elements which in other cases of poisoning have powerfully possessed the popular mind, yet in point of medical and psychologic interest it has an undoubted value. That the criminal, a practised malefactor, was directly inspired by the heroine of the recent "Great Oyer of Poisoning" is certain. Even in the pretext alleged by him to the carrier's boy as his reason for acquiring the poison, we hear an echo of the cosmetic peculiarities of Blythswood Square. "There is a strange morbid state of feeling created by the discussion of such cases," the Lord Justice-Clerk told the jury; "it arises from a strange desire to possess that command over human life which the knowledge of such poison produces, and sometimes leads, without one being able to detect the object, to the commission of similar crimes." And his Lordship was right; the Glasgow *cause célèbre* had the same effect upon Thomson's mind as the discussion of Palmer's case produced on the Leeds poisoner, Dove—a lust of mastery over the lives of others, which from Madeleine Smith's comparative acquittal he rashly inferred might be indulged with impunity. As Madame de Brinvilliers began her criminous career by poisoning the sick folk in the Hôtel Dieu, not grudgingly nor of necessity, but for mere pleasure in the exercise of a diabolic power, so Thomson destroyed Agnes Montgomery and attempted to destroy the Masons; and if the hideous deeds for which the marquise made so terrible an expiation far outstripped the clumsy efforts of the convict tailor, that was but the result of her environment, and nowise detracts from Mr. Thomson's performance. He did what he could. France under Louis XIV. was richer in possibilities of picturesque crime than mid-Victorian Scotland.

THE STRANGE WOMAN

THE STRANGE WOMAN

She is loud and stubborn ; her feet abide not in her house.
—*The Book of Proverbs.*

THIS is not a nice story ; but it is a short one, and for a variety of reasons I think it worth the telling. To begin with, the case to which it relates created in Edinburgh intense interest at the time. Both Jeffrey and Cockburn, those twin luminaries of law and literature, were associated in the defence. Further, the matter throws some light on the ways, not always of pleasantness, and the paths, here other than peaceful, pursued by certain of our forebears in the Auld Reikie of the early twenties. Finally, there is a curious legal sequel. For which causes, *pace* Mrs. Grundy and Mr. Podsnap, I propose to recall, as discreetly as may be and without unduly fluttering the dovecots of propriety, the forgotten circumstances of the affair.

Although no reports of the trial were published except those which the newspapers and magazines of the day supplied, the heroine's fate moved an anonymous scribe to write *A Biographical Account of Mary Mackinnon*, printed and sold at the *Observer* office, Mound Place, Edinburgh, in 1823. To this pamphlet, now rarely met with, I am indebted for the few known facts regarding the life of the unhappy woman that to some extent explain her tragic end. Our author, too, even in a less squeamish age felt the disadvantages attending his choice of a subject. "We are fully sensible of the difficulty of the task which we imposed upon ourselves when we undertook to give an account of the unfortunate life and ignominious death of Mary Mackinnon," he remarks in his opening sentence ; but holding as he does that all history and biography ought to afford either "models to regulate the conduct of

posterity, or examples which they ought to shun," his labours are directed to the enrichment of the latter category. For my purpose, however, it is regrettable that his work is much fuller in moral reflections than in biographical detail.

An appropriate dubiety obscures the origin of Mary Mackinnon. She is believed to have been born in Ireland, an only child, some thirty-two years before her earthly punishment. At her trial Captain Brown, of the Edinburgh City Police, stated that he had served with her father, a quartermaster in the 2nd Battalion, 79th Regiment, in which he himself was adjutant, and that he had known her since her fifteenth year. It appears that this Mackinnon, who had lost sight of his daughter for many years, came to Edinburgh and interviewed the prisoner after her condemnation, but failed to recognise her—"he unequivocally and positively denied that the unfortunate woman was at all connected with him." According to another account she was the child of one Archibald MacInnes, sometime a lime-burner in Isla, where she was born, her mother being a Hebridean damsel named Flora Macdonald, not, it is to be presumed, the protectress of Prince Charles. From the contemporary newspapers I gather that public opinion was divided upon the question of her parentage; but in the notice of her execution given in the *Scots Magazine* for May 1823,(*a*) it is said that at the last moment she admitted that her name really was MacInnes, and that her father had been a private soldier. Be that fact as it may, Mary was a daughter of the regiment, and as such successively visited St. Helena, the Cape of Good Hope, and the East Indies; "but her recollection of these parts of the world was very indistinct." When she was fifteen her mother died at Dunbar, where the regiment was then quartered. Her biographer gives us an ominous glimpse of the family on the night of the funeral: the father hopelessly drunk, and

(*a*) Vol. xii. N.S. p. 637.

the daughter succumbing to the wiles of a young officer who had for some time been paying her "very particular attention." Soon after she was thus betrayed the regiment left for England, and at Faversham her father consoled himself with a second wife. Of this lady we are significantly told that Mary had no cause for congratulation on his choice of her stepmother. About a year later her father quitted the army, and the family settled in Glasgow. In that city Mary formed acquaintances "who were not more tender of her reputation than the officer who visited her on the evening of her mother's funeral"; and as even the lax restraint of the parental roof grew irksome to her, she left home never to return. A voluntary orphan, "without resources, without friends, without religion," uneducated—she could hardly read or write—impetuous, irresponsible, and attractive, her future in a great city could easily be foreseen. The author passes lightly over her subsequent adventures, which make but sorry reading; an expedition to Gottenburg in company with a naval officer, "supposed to have been a Lieutenant C——," is the most presentable. She returned to Scotland, and in 1812 set up house in Edinburgh, where in due course she became well if not favourably known under the style and title of Mrs. Mackinnon, though it does not appear that she was ever married. The character of an establishment such as she maintained is best described in the emphatic words of King Solomon: "Her house is the way to hell, going down to the chambers of death"; and so in very deed it was to prove, in the latter clause at least, to one visitor in the year 1823. Her address was No. 82 South Bridge, a common stair still extant, in which she occupied a flat now appropriated to more legitimate commercial uses. I have elsewhere had occasion to note that the celebrated Mr. David Haggart visited her house with a friend in the last months of his eventful life.

On Saturday, 8th February 1823, two Edinburgh young men gave a bachelor dinner party in the lodgings which

they shared in Broughton Street. The hosts were Henry Ker, a land-surveyor, and William Howat, a writer's clerk; the hour was four and the company mixed, the guests including a cattle-dealer from Balerno named Alexander Welsh, Walter Grieve, a medical student, and James Johnston, described as an old man from the country. After dinner the arrival of John Wilkinson, an innkeeper of Bristo Street, completed the sederunt. In the course of the proceedings "two or three" bottles of whisky were consumed in the form of toddy, and when about nine o'clock the revellers rose to convoy Mr. Wilkinson to his home in Bristo, they were all visibly though unequally the worse of liquor. At the trial each gentleman deponed, in the manner of Baron Bradwardine after the symposion at Luckie Macleary's change-house, that though personally little affected by their potations, his companions were "rather intoxicated," and by general consent Howat was distinctly drunk. Now, Mr. Johnston, possibly because of his years and rural habits, had a strong aversion from such houses of entertainment as that over which Mrs. Mackinnon so discreditably presided, and in accordance with the unrefined humour of the age the others arranged a little joke at his expense. As the party went up the North and South Bridges it was suggested that the friends should take a parting glass somewhere, and a "proposition was made of going to Mr. Cooper, the boxer's." I know nothing against the character of this exponent of the fistic art, but apparently Mr. Johnston disliked its practitioners: he refused to agree—"he would go to a respectable house"; whereupon they crossed to the west side of the street and entered No. 82, of the reputation of which the old man, as a stranger, was unaware. "Mr. Johnston," says Ker, "was not pleased at the company into which he had been brought." He soon realised the trick that had been played upon him, and took an early opportunity of retiring; the others remained in the house for twenty minutes or half an hour. What happened during that time formed the

subject of the judicial proceedings which we are about to consider. When the police appeared on the scene they found that William Howat had been stabbed by somebody, and was in a serious condition. All the persons present in the house were taken into custody, and the wounded man was removed to the Royal Infirmary, where in consequence of his injuries he died on 20th February. On the 10th of that month, in presence of Mr. George Tait, Sheriff-Substitute, the dying man made a declaration as to how he came by his wound, which he said had been given him by Mrs. Mackinnon; and when the prisoner was shown to him, he identified her as the person referred to in his declaration.

The evidence taken by the authorities led to the release of all the parties concerned except Mrs. Mackinnon, who on Friday, 14th March 1823, was brought to the bar of the High Court of Justiciary, charged with the crime of murder, by having, on the evening of 8th February, assaulted and stabbed in the breast with a table knife William Howat, then clerk with Thomas Johnstone, writer in Edinburgh, of which wound he languished in the Infirmary until the 20th day of the same month, when he died.(*a*) The judges present were the Lord Justice-Clerk (Boyle), and Lords Pitmilly and Meadowbank; the counsel for the Crown were the Solicitor-General (Hope), Duncan M'Neil, Robert Dundas, and Archibald Alison, the future historian of Europe. Francis Jeffrey, Henry Cockburn, and Thomas Maitland, instructed by James Rutherford, W.S., appeared for the defence. Excepting Jeffrey, the same counsel had two years before defended David Haggart; of Lord Meadowbank and Mr. Rutherford we shall hear further in the sequel. The pannel pleaded not guilty, and no objection having been taken to the relevancy of the indictment, a jury of Edinburgh merchants was empannelled. In the written defences lodged for the prisoner it was stated

(*a*) The following account of the trial is given from the report of the case published in the *Edinburgh Literary Gazette* of 15th March 1823, pp. 97–108.

that she kept a licensed tavern in the South Bridge. She had left her house on 8th February to visit a neighbour, and during her absence a riot took place. The deceased, along with others, in a state of intoxication, came into her house, she herself being absent, broke the furniture, and violently assaulted certain females who lived in the house; when she returned she was herself knocked down, and if the deceased sustained any injury at her hand, she knew nothing of it. Her original explanation, given at the police office after her apprehension, was that Wilkinson struck the fatal blow, and that she had seen a knife in his hand, but this statement was apparently not maintained by her at the trial.

The first witness called for the Crown was Sheriff Tait, who deponed to the circumstances in which Howat emitted his dying declaration, and his identification of the prisoner as his assailant. This evidence was corroborated by Mr. Scott, the Procurator-Fiscal.

Henry Ker was then examined. He described the dinner party given by him and Howat, and the practical joke of which old Mr. Johnston was meant to be the victim. He himself was little affected by drink; Howat was drunk, but could walk; Welsh and Johnston were less, Wilkinson and Grieve were more, intoxicated—"all walked without any assistance whatever." The whole party went up to the house. They were admitted and shown into a room. An order for a jug of toddy was immediately executed. This was discussed with the assistance of divers damsels who resided there under the equivocal auspices of Mrs. Mackinnon. He identified Elizabeth M'Donald, Elizabeth Gray, and Mary Curley as three of the girls in question. The toddy dispatched and paid for, his party proposed to leave, but the ladies said "it was a shame for them to go away for one jug; there ought to be jugs apiece." This discussion, which at first was academic and conducted with good humour, was continued in the passage and resumed in the kitchen, where, appropriately, it increased in warmth. There they found two other fair boarders, Margaret White and Margaret Orr.

Mr. Johnston meanwhile had prudently made his escape. The ladies then locked the house door, and refused to allow their visitors to leave unless more drink was forthcoming. Ker was chiefly engaged in controversy with Miss M'Donald, a vigorous and stalwart nymph, who vehemently opposed his going, laid violent hands upon him, tore his shirt frill, spoilt his hat, and knocked him down behind the kitchen door. On his regaining his feet the amazon again fell upon him, so Ker, determined to get out, tripped her up with his foot. He remembered Grieve saying to him, "Don't strike a woman," to which he replied that he would not do so. This was all the violence used by him that night, and was only what was necessary in order to extricate himself. He rejoined Welsh and Wilkinson, who were in the passage. M'Donald at once followed, and made an attack upon Wilkinson, striking him with her clenched fists. Ker went back to the kitchen to bring out Howat, who was standing at the fireplace, Grieve being also there. He heard no cries of murder. There were candles in the rooms and passage, but none of his party had a candlestick in his hand. At this moment Mrs. Mackinnon, whom they had not seen that night, entered the kitchen. "Stand back," she cried; "let me get a knife, and I'll soon settle the b——s!" There was then no disturbance going on, and nobody was attacking M'Donald. Mrs. Mackinnon went straight to the dresser and deliberately selected a knife from a tray. No one had spoken to her at that time. He noticed a strange man (Samuel Hodge) and woman (Jean Lundie) at the kitchen door. With the knife in her hand Mrs. Mackinnon made a spring at Ker; he parried the blow aimed at him, and she was then restrained by M'Donald and Lundie. No violence was offered to her or to any of the women after that. The man Hodge took no part. Welsh and Wilkinson were still in the passage, and all the women were in the kitchen. He next found that Howat, beset by both Mackinnon and M'Donald, was keeping them at bay with his clenched fists. He saw the pannel raise her right hand with the knife in it over her

left shoulder, and make a sweeping thrust at Howat. He at once seized her and tripped her up, but it was too late: the blow was given suddenly, and took effect on the left side. He went to his friend's aid. Howat said to him, "Henry, she has given me a wound," and fainted. Blood was flowing from the left side; the vest was opened and he saw the wound. No one but the pannel had a knife at the time. He did not notice what became of the women after his friend was struck; none of them offered any assistance. When the police arrived he asked to be taken to the office. All his party went there willingly. He was almost constantly with Howat till his death, and heard him name Mrs. Mackinnon as his assailant. Only one question, as to the length of time the party were in the house, was asked in cross-examination.

John Wilkinson corroborated the evidence of Ker. He and Welsh left the house when Johnston did, but hearing a noise of quarrelling, they turned at the top of the stair and went back. They did not enter the kitchen, but remained in the passage. He saw Mrs. Mackinnon come in from the street; she seemed angry, and "scolded" as she passed him. M'Donald came out of the kitchen and struck him violently on the breast. Welsh prevented him from retaliating. No violence was used to the girl. He heard Ker cry out that Howat was stabbed. He then entered the kitchen, and saw Mrs. Mackinnon and the women standing about, and Howat, wounded and bleeding, in a chair. He did not recollect noticing any strange man, nor did he see any person with a knife. In cross-examination, Wilkinson admitted that at the time he was "very much intoxicated," but said he had a perfectly clear recollection of what happened. There was no quarrel prior to his leaving the house the first time. In reply to questions by the Court and jury, he stated that personally he had no struggle with anyone that night. He remembered the prisoner at the police office "charging him with the murder." He was quite certain that while in the passage he heard Ker cry that Howat was wounded.

Alexander Welsh corroborated the account given by the previous witnesses. From the passage he could not see what was going on in the kitchen. Mrs. Mackinnon, with a man and a woman (Hodge and Lundie) came in from the street. "The landlady was apparently in a passion," but he could not recollect the words uttered by her. He heard Ker call out that Howat was stabbed, and he and Wilkinson then entered the kitchen. Wilkinson was not in the kitchen until after he heard the cry. He saw no one with a knife that night.

Walter Grieve, medical student, corroborated the statements of his friends. He went into the kitchen to get the other two men away, but Ker would not leave without Howat. Before Ker came in, he saw Howat strike M'Donald on the head. M'Donald assaulted Ker and afterwards Wilkinson; she seized a candlestick, which witness took from her. Mrs. Mackinnon came in with Hodge and Lundie. He did not see the blow struck, but saw Mackinnon falling down and heard her cry "Murder!" At the same time Ker called out that Howat was stabbed. In cross-examination, he admitted that he did not notice Mrs. Mackinnon's presence in the kitchen till he saw her lying on the floor. There was nothing to prevent his leaving when Johnston and the others left.

The declaration of Howat was then read, which agreed generally with Ker's account of what occurred. He tried to ward off the blow, but failed; the knife struck him on the left breast, below the collar. None of his companions except Ker could have seen the thrust given. He was certain Mrs. Mackinnon was the person who struck him.

Elizabeth M'Donald was next called. She alleged that after the toddy incident Wilkinson "used her in a very uncivil manner," smashed a chair, and followed her into the kitchen, where he again attacked her. Ker came in shortly after, took up a candlestick from the dresser, and struck her with it on the breast, "which became black in consequence." He afterwards twice assaulted her. Margaret

M'Innes (the servant) took the candlestick from him. The witness's version of the episode became, upon further research, so obscure that the Solicitor-General moved to have her answers judicially taken down, and the Lord Justice-Clerk warned her to be careful, remarking that a more contradictory testimony had never been given in any Court. After taking her in hand himself, his Lordship observed that it was his sacred duty to tell the jury that her evidence was not worth their attention. Cross-examined by Jeffrey, M'Donald said Mary Curley went out for Mrs. Mackinnon, who had been away two hours. When the latter returned she ran into the kitchen crying, "In the name of God, what is this?" Wilkinson and Ker were then in the kitchen. Wilkinson knocked Mrs. Mackinnon down and tore her cap. Ker, in trying to strike Mrs. Mackinnon, struck witness on the shoulder. Wilkinson held Mrs. Mackinnon down. Howat was sitting on a chair, leaning his head on the dresser. The police arrived, and he was carried to another room. She did not see Mrs. Mackinnon with a knife in her hand, nor standing opposite Howat. The latter was, in her judgment, "tipsy"; the others were merely "hearty"; she herself was sober. A long re-examination by the Solicitor-General only involved Miss M'Donald's evidence in greater confusion—even the reporter apologises for his inability to render it intelligible.

The demoiselles Gray and Curley were also examined. Their testimony added little to the facts already proved, but each of them alleged that she had been assaulted by some one of the visitors: they kept, in their evidence, as much as possible out of the kitchen, and swore they saw nothing of the murder. Jane Lundie, residing in Lover's Lane, Leith Walk, said she was at Hodge's with Mrs. Mackinnon on the night in question, and followed her to the South Bridge house, where she "perceived a great confusion in the passage." When she entered the kitchen "there was a gentleman on a chair," and Mrs. Mackinnon was lying on the floor. She assisted her to rise. Samuel

Hodge, grocer, Cowgate, stated that when he reached the house he found several men and women in the passage. They seemed to be quarrelling with one another, but no violent blows were given. His account of what he saw in the kitchen tallied with that given by Lundie.

James Stuart, apprentice surgeon, deponed that he entered the house along with the police. He found "a great bustle of people" in the passage. Mrs. Mackinnon, who seemed agitated, told him that some men had come into the house and assaulted several of the inmates. The police summoned him to the kitchen, where he saw a man sitting in a state of stupor, with a large wound in his chest. He attended to him at once; none of the women offered their aid. Ker and Grieve seemed quite sensible, and well aware of what was going on.

Robert Allan and William Newbigging, surgeons to the Royal Infirmary, described the nature of the wound and the varying symptoms of the patient from his entry into the infirmary until his death, as also the results of the post-mortem examination of his body. The wound in the chest was unquestionably the cause of death. Dr. William Dumbreck corroborated their report.

Sir Robert Christison, in his notes upon the case remarks: "The body was examined in the Royal Infirmary by warrant of the Sheriff, in my presence, but as an unconcerned spectator only. A gash was found in the left ventricle of the heart; whereupon the inspection was about to be brought to an end by sewing up the body. But I stepped up to the inspecting surgeons, and suggested that they should fix exactly the direction of the wound. It was then seen that the knife, after severing the cartilage of the second left rib, had penetrated to the left, somewhat inward, and very much downward. This fact proved to be of great consequence. The friends of the murdered man were tipsy at the time, and those of the woman were on other grounds untrustworthy. The woman stated in her declaration that the young man and his companions having become up-

roarious and rude, she seized the knife in self-defence, and held it before her with the point sloping forwards and upwards, when he stumbled towards her upon its point. One of his friends, on the other hand, swore he distinctly saw the woman hold the knife daggerwise, raise her hand towards her left ear, and strike towards her own right and downwards—in which way exactly would such a wound as was found be produced." (*a*)

The Crown case closed with the reading of the pannel's declaration, in which she denied all concern in the murder of Howat, and threw the whole blame of it upon his own party.

Only five witnesses were examined for the defence. Dr. Black, police surgeon, said he was called to Mrs. Mackinnon's house, where a young man had been wounded. He saw her that evening, and attended her professionally for several days. She complained of pain in her head from having been knocked down, and also of spitting blood. She seemed distressed both in mind and body. He found one bruise on her side. He had likewise attended Elizabeth M'Donald. He found the mark of a blow, apparently from a fist, upon her left breast, and her face bore marks of violence, but these were more evident on the night in question. He also attended Margaret M'Innes, who complained of a violent injury on the side, of which he could find no trace. James Christie, keeper of the Lock-up House, deponed that on the night when Mrs. Mackinnon was entrusted to his care he observed blood on her cap, and she complained of pain in her head. He saw her spit blood once only. Mrs. Sheriff, wife of John Sheriff, upholsterer, Cowgate, stated that on the night of the "accident" at Mrs. Mackinnon's, a boy named John Smith, who resided with witness, was sent by her on an errand to the Abbey. John Smith, aged fourteen, said he knew the pannel, and had heard of the "accident" in her house. She asked him to go an errand

(*a*) *The Life of Sir Robert Christison, Bart.*, Edinburgh, 1885, i. 292–293.

that night about half-past ten. He saw her at Hodge's shop. While there, the girl Curley came in and said some men were in the house "putting M'Donald into the fire." He ran to the house before the pannel, and saw a man executing that barbarous purpose upon the young lady in question. When Mrs. Mackinnon arrived she sent him for the police. He found a watchman at the head of Blair Street. On leaving the house he heard cries of murder. Captain Brown, late Superintendent of Police, stated that he had served for several years in the same regiment with the prisoner's father, and had known her ever since she was fifteen, when she was seduced in atrocious circumstances by an officer. From that time her father neglected her in the most shameful manner. Her disposition was always humane and peaceful; he knew nothing peculiar about her house.

The exculpatory proof being here closed, the Solicitor-General addressed the jury for the Crown. After some general remarks upon the painful character of the case, and certain moral observations thereon which need not detain us, he commented severely upon the "wilful and horrible perjury" committed by the witnesses for the defence. The exhibition of Master Smith and the tale he told could not be too strongly reprobated; and he was sure his learned friend did not expect such statements to come from the boy, which were flatly contradicted by his own witnesses. If the jury believed that the pannel struck the blow, the charge could only be evaded by the plea of self-defence, or by evidence that there was such extreme provocation given as justified a verdict of culpable homicide. It was clearly proved that the blow was dealt by the pannel, and from the evidence no conclusion could be drawn which would justify the use of lethal weapons. He then examined the evidence of Ker, which, he held, received great support from the statement of Stuart, who swore distinctly to Ker's sobriety and capacity of observation. With regard to the allegations of M'Donald, all that Ker did was merely to extricate himself from her grasp. To the pannel, before she struck Howat,

no violence whatever was used, but after the fatal blow was given Ker tripped her up. It was natural for him to spring forward to his friend's relief when he saw Howat in such imminent danger. Her fall might well account for the symptoms described by Dr. Black. After reviewing the evidence of the rest of the party, which completely refuted the insinuation that the blow was given by Wilkinson or by any of the men, he said that their united testimony formed a body of evidence strong and irresistible, agreeing in all its substantial features. Each of the witnesses for the defence, on the other hand, told a different story, and every one more incredible than another. They contradicted each other in every important fact, and it was material to note that none of them alluded to the absurd idea of Wilkinson being the murderer, which was the real groundwork of the defence. It was clearly shown by the proof that no justification of a recourse to lethal weapons could be maintained; and he therefore submitted that if the jury were satisfied the wound was inflicted by the pannel, they must find her guilty of murder.

Jeffrey's speech for the defence has, unfortunately, not come down to us. The proceedings had lasted for fourteen consecutive hours, and the reporter pleads physical exhaustion for his failure to supply even an outline of that "warm, eloquent, and impassioned address." This is the more regrettable that, in view of what Lord Cockburn well calls "the bad elements in his hands," it would have been interesting to learn how Jeffrey treated a case apparently so hopeless. His effort must have been a brilliant one, for Cockburn reckons the speech "beautiful," and says it is "remembered to this hour."(*a*) Probably, as his Lordship's adjective suggests, Jeffrey's appeal was directed to the hearts rather than to the heads of the jury. He made the most of the inevitable discrepancies in the evidence of the Crown witnesses, which, he said, precluded an undoubted

(*a*) *Journal of Henry Cockburn*, i. 142; *Circuit Journeys*, p. 340.

conviction of guilt, and argued that, even in the most unfavourable light, the circumstances in which the prisoner was placed justified her having recourse to lethal weapons. "Mr. Jeffrey concluded with a strong and energetic appeal to the feelings of the jury on behalf of the unfortunate creature, who early in life had been cast on the wide world with a diminished reputation, and had been deserted by those whose reclaiming discipline might have drawn her from the dreadful course of iniquity in which she had indulged."

The Lord Justice-Clerk then charged the jury "in a luminous and comprehensive speech," of which the particulars are not reported. His Lordship told the jury that more credit ought to be attached to the evidence of the men than that of the women upon those points in which the two came into collision, and that there was nothing in the circumstances of the case to render the act justifiable. The jury, after retiring for twenty minutes, returned their verdict, finding, by a plurality of voices, the pannel guilty of the crime of murder; but they, also by a majority, recommended her to mercy. She was accordingly sentenced to be executed at Edinburgh on 16th April, and her body thereafter to be given to Dr. Alexander Monro for dissection, his Lordship adding that though he could see no grounds in the circumstances of the case for the jury's recommendation, it would be forwarded to the proper quarter. When the verdict was returned the prisoner fainted, and after receiving sentence she fainted again; as the Court rose she was "lying extended, apparently lifeless, on the seat." It must have been an ugly business.

The *Edinburgh Evening Courant* of 15th March 1823 ends its account of the case as follows: "The trial lasted from ten o'clock yesterday until four o'clock this morning, and so great was the interest excited that by an early hour yesterday morning all the doors of the Court were crowded with people. Strong bodies of the police were stationed in the Court and at the doors to preserve order, but so great was

the pressure and the anxiety to gain admission that once or twice the Court had to announce that unless better order was kept the room would be cleared. The Parliament Square during the whole day, and even until the termination of the trial, was filled with people anxious to learn the progress." It appears that the verdict met with popular approval, but people were surprised that it was not unanimous. Application for a reprieve seems to have been made in accordance with the jury's recommendation, and Cockburn states that if certain circumstances which were established in a precognition taken after the conviction by order of Sir Robert Peel, then Home Secretary, had transpired on the trial, it is more than probable that Jeffrey would have prevailed on the jury to restrict their finding to culpable homicide. "But in law it was a murder, and Peel, though moved, was advised that she could not be spared."(*a*) I have failed to find any other reference to this extrajudicial inquiry, of which no particulars seem to have been published.

The execution, which took place at the head of Libberton's Wynd in the Lawnmarket on the appointed day, attracted an immense concourse of people, estimated at not less than 20,000, numbers of whom had arrived on the preceding day from various parts of the country. "From the site of the old Weigh House to the Exchange, the multitude presented a solid mass; and the windows and house-tops within that space were also covered with spectators."(*b*) Cockburn has preserved a curious anecdote of the occasion: "She died publicly, but gracefully and bravely; and her last moment was marked by a proceeding so singular, that it is on its account that I mention her case. She had an early attachment to an English Jew, who looked like a gentleman, on the outside at least; and this passion had never been extinguished. She asked him to come and see her before her fatal day. He did so; and on parting, finally, on her last evening, she cut an orange

(*a*) *Circuit Journeys*, p. 340.

(*b*) *Scots Magazine*, vol. xii. N.S. p. 637.

An Execution at Libberton's Wynd-Head.

(After an etching by Walter Geikie.)

into two, and giving him one half, and keeping the other herself, directed him to go to some window opposite the scaffold, at which she could see him, and to apply his half to his lips when she applied her half to hers. All this was done; she saw her only earthly friend, and making the sign, died, cheered by this affection. Here the anecdote ought to have ended; and if it had been an invention, it would have ended here. But see how nature's wonders exceed those of art. She had left everything she had, amounting to four or five thousand pounds, to her friend. He took the legacy, *but refused to pay the costs of her defence*, which her agent only screwed out of him by an action."(*a*)

The episode of the symbolic orange is also recounted by George Combe, W.S., and may be read in his observations on the cerebral development of Mrs. Mackinnon.(*b*) The philosopher makes a comparative analysis of the characters of that lady and of David Haggart, another of Edinburgh's black sheep, deduced by him from their "bumps," and illustrated by certain grim engravings of their respective heads, as shaved to facilitate the application of his art after their owners had no further use for them. The woman's features, of the Bourbon type, are surprisingly aristocratic, and indicate an imperious temper. "It is impossible to doubt," writes Combe, "that the murder of Mr. Howat was committed on the impulse of the moment," and he finds upon inquiry that Mrs. Mackinnon was "excessively prone to rage," a weakness of which he gives several examples. To her highly developed *destructiveness* he attributes the complacency with which she viewed the death of her victim, while her equally powerful *secretiveness* accounts in his opinion for her persistent denial of guilt. Doubtless the conclusions of the amiable scientist were not arrived at without perusal of the *Biographical Account* before cited, which furnishes many instances characteristic of the heroine's

(*a*) *Journal*, i. 142-143; *Circuit Journeys*, 340-341.

(*b*) *Transactions of the Phrenological Society*, Edinburgh, 1824, pp. 362-379.

mentality. As might be looked for in one of her ill-regulated life she was strongly emotional and superstitious, and her volatile disposition was the despair of the ministers who attended her while in prison. When they pointed out with Whom all hope of mercy must ultimately lie, she remarked, "But it can do no harm to try George IV. in the meantime"!

Despite its more than prosaic circumstances the case begot upon the local Muse a little progeny of ballads, neither better nor worse than those to which similar occasions have given birth. Of these, *Mackinnon's Ghost* and *Mary Mackinnon's Lament* are not of much account, but *Mackinnon's Garland*, "To the Tune of 'Catherine Ogie,'" rings throughout its dozen stanzas with a robustious ribald humour, unfortunately too untrammelled for quotation.

Cockburn's reference to the baseness of Mrs. Mackinnon's residuary legatee regarding the costs of her defence has given me some trouble, and is difficult of verification. I find that on 31st January 1825 there was tried in the Jury Court, before Lord Chief Commissioner Adam, an action by James Rutherford, W.S., against Robert Baird, accountant in Edinburgh, for payment of the expense of defending the late Mrs. Mackinnon on her trial.(*a*) The defence was that the defender did not employ the pursuer, nor did he subsequently render himself responsible for payment of the account. The issue submitted, which had been approved by Lord Meadowbank, before whom the action was raised in the Court of Session, was as follows: "It being admitted that the pursuer was employed as agent to conduct the defence of the late Mrs. Mackinnon, and did conduct her defence accordingly,—Whether the pursuer was so employed by, and on the credit and responsibility of, the said Mrs. Mackinnon? or by, and on the credit and responsibility of, the defender? or by, and on the credit and responsibility of, the defender and Mrs. Mackinnon jointly?" Fullarton and Rutherford appeared for the pursuer; Jeffrey, Skene,

(*a*) Murray's *Reports of Cases Tried in the Jury Court*, vol. iii. p. 489.

and Gillies for the defender. At the outset the Lord Chief Commissioner observed that in this issue the only fact was the employment; the credit and responsibility were points of law. He could not allow the jury to put a finding of law upon the face of their verdict. The verdict might either be on the fact, or a general verdict, the Court stating the law. After evidence had been led, it was argued for the pursuer that he was employed by Mrs. Mackinnon and the defender, and that he did not deny his liability till six months after her death, though there had been frequent demands made upon him. Jeffrey replied that no case had been made out; it was only proved that the defender assisted another person in defending Mrs. Mackinnon, and made certain payments out of her funds. The evidence showed that the pursuer was employed before the defender saw him. His Lordship charged the jury, and after reviewing the evidence, said: "As this is an issue drawn in the Court of Session, I feel anxious as to the verdict to be returned. If you think the pursuer has not made out his case, you may find for the defender; but if you think he has made out his case, it is difficult to say what finding you ought to return, as the verdict must be returned to the Court of Session for that Court to find the law. If a general issue had been sent, then a verdict upon it would have been a warrant for judgment here. The issue would have been, whether the defender alone, or along with Mrs. Mackinnon, undertook to pay, and the jury could then have distinctly found one way or other; but here the question is so put, that if the jury make a return in terms of the issue, it would be putting a point of law on the face of the verdict. This you must try to avoid, and will find for the pursuer or defender, according to the opinion you have formed on the facts and circumstances." The verdict, therefore, was simply "For the defender."

To the lay mind these particulars may perhaps, like the bones to the prophet Ezekiel, seem "very dry," but they are none the less relevant, as will presently appear.

The Jury Court was then a comparative novelty in Scotland. Instituted in 1816, it marked the introduction of trial by jury in civil causes. "A separate court, a presiding judge trained to English practice, special issues, and no more extensive jurisdiction in matters of law than was indispensable for the trial of facts, were all necessary at first," says Cockburn,(*a*) and of the Chief Commissioner he remarks: "Adam had the misfortune to come into this new scene under exaggerated expectations of what he was to do"; but he adds, "No one else could have either launched or piloted it."(*b*) So dissatisfied was Adam with Lord Meadowbank's conduct of the case that he took what must have been the very unusual course of reporting the matter at length to Lord Chancellor Eldon. From the matter as represented by him, "it cannot fail to appear," he wrote, "not only how little the framing of issues is understood in the Court of Session, but it also serves to exhibit the difficulties which have presented themselves in trying special issues, from the commencement of the institution to the present moment." Naturally Lord Meadowbank was exceeding wroth with the Chief Commissioner, and in his turn he addressed an open letter to the Lord Chancellor on the vexed question of the issue in *Rutherford* v. *Baird*, annexing thereto the condescendence and answers of the parties to that process. Printed copies of these documents were circulated privately, and to one of them I am indebted for the details. It seems from the record that the "other person" mentioned by Jeffrey as associated with the defence was one Abraham Lyons, "who took an interest in Mrs. Mackinnon's fate." This must be the English Jew of Cockburn's anecdote, "who looked like a gentleman on the outside," but I can find no trace of any attempt to "screw" the costs out of *him* by an action. Meadowbank stoutly combated the charge of incapacity brought against him by the Chief Commissioner, and complained with justice of

(*a*) *Memorials of His Time*, 1856, p. 295.
(*b*) *Ibid.*, pp. 296, 298.

"that learned person" having refrained from all previous communication with him on the subject, either before the trial of Rutherford's case, or when preparing the address to the Chancellor, and also of the circulation of the latter a fortnight before it was brought to his notice. He maintained that the issue was correctly framed, and that he was confirmed in that view by "the concurring opinions of the whole counsel in the case." In conclusion, his Lordship observed that he had formerly been obliged, in discharging another public duty, to state to the Parliamentary Commissioners "the great unpopularity of the Jury Court, and the prejudices entertained against it, as well as the circumstances to which those feelings were to be attributed." His doing so could hardly fail to be remembered by its learned head, who, like Queen Mary, may thenceforth have studied revenge; but in 1830 the Jury Court ceased to exist as a separate Court, and with it went the power of the Chief Commissioner. A Parliament House wit likened it to the garden of Eden: "because it was made for Adam." What action, if any, the Lord Chancellor saw fit to take in the matter does not appear.

Alexander Maconochie, Lord Meadowbank, second of that judicial title and the friend of Sir Walter Scott, presided at the famous Theatrical Fund Dinner in Edinburgh, on 23rd February 1827, when the identity of "The Great Unknown" was publicly revealed. "Meadowbank taxed me with the novels," writes the Author of *Waverley*, "and to end the farce at once I pleaded guilty, so that splore is ended."(*a*) The first Lord Meadowbank was a man of great ability and varied accomplishments, by whose shining qualities, in the opinion of the Parliament House, his son and successor was somewhat overshadowed. The latter is said once to have interrupted the pugnacious John Clerk, who was pleading before him, to ask the distinction between the words "also" and "likewise," which counsel was reiterating in the course

(*a*) *Journal of Sir Walter Scott*, i. 364.

of his argument, and which the judge deemed synonymous terms. "Your Lordship's father," came the unexpected retort, "was Lord Meadowbank; your Lordship is Lord Meadowbank *also*, but not *likewise*!" Cockburn, however, calls him a curious and able man; and Mr. Omond remarks of him that, "although not equal to his father, he was a painstaking and conscientious judge."(*a*)

(*a*) *The Lord Advocates of Scotland*, ii. 255.

THE LAST TULZIE

THE LAST TULZIE

O quale hoc hurly-burly fuit ! si forte vidisses
Pipantes arsas, et flavo sanguine breickas
Dripantes, hominumque heartas ad prœlia faintas.
—*Polemo-Middinia.*

THE causeway of Auld Reikie was long regarded by factious persons as an appropriate venue for the settlement by combat of their private feuds, and the resulting tulzies, to employ the technical term for such rencounters, were of common occurrence in the capital. Even readers unversed in the story of her turbulent past will remember the conflict between the Seytons and the Leslies, so vividly described in *The Abbot*, by which Sir Walter illustrates and keeps in mind this old uncivil custom. Contemporary annalists make repeated mention of these public brawls. There was the famous street skirmish in 1520 between the Hamiltons and the Douglases, known as Cleanse the Causeway, when the latter, as Pitscottie records, "keiped both the gaitt and their honouris"; and that in 1551 between the Kerrs and the Scotts,

When the streets of High Dunedin
Saw lances gleam and falchions redden,
And heard the slogan's deadly yell—
Then the Chief of Branxholm fell.

We recall, too, how in 1593 Sir James Sandilands, one of King James's minions, slew in a scuffle "at ye fitt of Leith wynd" a Lord of Session against whom he bore a grudge, and when in the following year the Lord Chancellor and others sought to avenge the murder in a High Street tulzie, his Lordship, finding the tide of battle unfavourable, "reteirit himself with glaydnes to the College of Justice,"

as the *Historie of King James the Sext* quaintly reports. Sandilands was sorely wounded, "bot convalescit agayne." Robert Birrel, the old Edinburgh diarist, notes divers instances of such affrays: "The 24 of November [1567], at 2 afternoon, ye laird of Airthe and ye laird of Weems mett upone ye heigh gait of Edinburghe; and they and ther followers faught a verey bloudey skirmish, quher ther wes maney hurte one both sydes vith shote of pistol."—"The 4 day of November [1601], being ane fair day in Edr. [that is, not a dry, but a market day] ane combat foughten betwixt the Keirs and the Turnbulls, qr. yair wes grate bluid."—"The 17 of Junii [1605], ane combat or tulzie foughten at the salt tron of Edr. betwixt the laird of Ogle, zounger, and hes complices, and the zoung laird of Pittarow, Wischart. The faucht lastit frae 9 hours at night till ij at night, twa hours. Yair wer sundrie hurt one both sydes, and ane Guthrie slaine, which wes Pittarow's man, ane verie prettie zoung man."

Nor did the contentious citizens rest satisfied merely with internecine strife: a favourite variation was to combine against constituted authority. An "Account of Mobbs at Edinbg.," preserved among the Newcastle MSS. in the British Museum, prepared for the instruction of the Government during the affair of the Porteous riot, gives a succinct *résumé* of these metropolitan disturbances. Thus, "about the year 1701 the Mob rose in Edinburgh, burst open the Door of the Tolbooth, and released what Prisoners they thought fit. This is commonly called the Darien Mob." The next example is that of the mob which, in 1705, insisted on the hanging of Captain Green and his crew, whom Queen Anne was disposed to pardon. The deliberations of the Privy Council were distracted by a furious multitude clamouring at their doors; the Lord Chancellor was attacked with stones and sticks, "his Coach being broke to pieces, and my Lord run up the stairs of a house." During the debates upon the Treaty of Union, "the Mob were so insolent as to beat with stickes and clubs

THE COLLEGE COMBAT.

(*From a Contemporary Drawing by Professor Edward Forbes.*)

at the very Door of the Room where the Parliament was actually sitting," and the Lord High Commissioner and the Lords of the Council, in passing between Holyrood and the Parliament House, "durst not go in their coaches, but were forced at the hazzard of their lives to walk with their servants through the streets where the mob was so assembled." Apparently the carriages of the great had an inflammatory effect upon the passions of the Edinburgh proletariat. Again, in 1734, "two Apprentices were put in prison for a misdemeanour by the Magistrates," says the same authority, with a fine disregard for the principles of collocation, "upon which the Mob rose and marched towards the Nether Bow Port, where Major Leighton met them with the Canongate Guard; the Mob attacked the Troops with great stones and wounded the Major." Finally, on the memorable night of 7th September 1736, the citizens achieved international celebrity by the taking of the Tolbooth and the lynching of Captain Porteous. That was the last serious engagement, the mob in after years finding sufficient relief for their unruly passions in the periodic differences with the Town Guard, immortalised in the poems of Robert Fergusson.

It is interesting to find from Steven's *History of the High School of Edinburgh*, that even the scholars of those times were rebellious beyond the common wont of boyhood, and were often committed to prison and fined for their misconduct. "Barring-out" their masters was a regular institution; the pupils, well provisioned and armed, held the old schoolhouse in the historic Yards, hard by the Cowgate Port, to which their long-suffering preceptors laid siege, with varying success. Sometimes that seat of learning was carried by assault, or the garrison, subdued by famine, would surrender and be duly flogged; sometimes, to the detriment of discipline, the defenders enforced acceptance of their terms, usually a week's holiday. In the general amelioration of manners brought about by the eighteenth century, these academic tumults were commuted to the relatively

blameless bickers, of which in the preface to *Waverley* Scott gives so engaging an account; but during the enlightened reign of James the Sixth the High School boys, participating in the general licence of that golden age, pushed their "privilege" so far as to incur a criminal prosecution before the High Court of Justiciary. The facts as narrated by Birrel in his "Diarey," being strikingly characteristic of the ways of Jacobean Edinburgh, are sufficiently curious to warrant transcription. "The 15 of September [1595], Johne Macmorrane slaine be the shott of ane pistole out of the schooll. This Johne Macmorrane being baillie for the tyme, the bairns of the said gramar schooll came to the tounes counsell [the patrons of that institution] conforme to yair zeirlie custome, to seek the priuiledge, quha wes refusit; upone the qlk, ther wes ane number of schollaris, being gentelmens bairns, made ane mutinie, and came in the night and tooke the schooll, and prouydit yameselfis wt. meit, drink, and hagbutis, pistolet, and suord: they ranforcit the dores of the said schooll, sua yat yai refusit to let in yr. mr. [master] nor nae uthir man, wtout they wer grantit ther privilege, conforme to yr. wontit use. The Prouost and Baillies and Counsell heiring tell of the same, they ordeinit Johne Macmorrane baillie, to goe to the gramar schooll and take some order yrwt [therewith]. The said Johne, with certein officers, went to the schooll, and requystit the schollaris to opin the doreis: yai refusit. The said baillie and officers took ane geast [joist or beam] and rane at the back dore with the geast. Ane schollar bad him desist from dinging up the dore, utherways, he vouit to God, he wald shute ane pair of bulletis throw hes heid. The said baillie thinking he durst not shute, he, with his assisters, ran still wt. the geast at the said dore. Ther came ane schollar callit William Sinclair, sone to William Sinclair chansler of Catnes [Chancellor of Caithness], and with ane pistolet shott out at ane window, and shott the said baillie throw the heid, sua yat he diet. Pntlie [presently] the hail tounesmen

ran to the schooll, and tuik the said bairns and put yame in the tolbuith: bot the haill bairns wer lettin frie wtout hurte done to yame for the same, wtin ane short tyme yairafter."

There is a gap in the Justiciary Records for the period from 1591 to 1596, so that unfortunately no official account of the prosecution survives, but I find the matter referred to upon the trial in 1612 of a boy named James Middleton, "for the crewall Slauchter of umquhile Clement Mauchane," his comrade, "be streking of him with ane dirk under the schorte ribbis, upon the *diaphragma*, quhilk is ane noble pairt." Objection was taken to the indictment on the ground that the accused was a minor of fifteen: "Lyk as, in the accident that fell furth be the scolleris of the Grammerscole of Edinburgh, in slaying of Johnne Mcmorrane, being ane bailzie, and in the execution of his office, this allegeance being proponit in the persute intentit agains thame for the said Slauchter, it was ffund be Interloquitour of the Judge, in respect of thair minoritie, that thai war nocht *doli capaces*, and sa wer assoilzeit." To this the Crown replied: "As to the practique allegit betuixt Johnne Mcmorrane and the Chancellor of Caithnes Sone and the rest of the bairnes, quhome the pannell allegis to haif bene persewit for the said Johnne Mcmorranes slauchter, it is certain that all the bairnes that war persewit and accuset for that slauchter war within fourtene yeiris of age; and thair was na Interlocutour gevin in that cause, bot the matter was tane up be his Majesties expres Warrand." Further, the prosecutor was able to prove that Middleton was in fact seventeen, so the death penalty was pronounced, though afterwards commuted to voluntary exile for life.

King James knew Macmorran personally; he was fond of dining with well-to-do citizens, and attended a few years later a banquet given in the bailie's house in Riddle's Court, a fine example of sixteenth-century domestic architecture, unaccountably spared by the exterminators of our civic treasures, who did not scruple to destroy the palace and

oratory of a Catholic Queen to make way for a Free Church hall. His Majesty was early informed of the tragedy ; the Provost himself took the news to Falkland next morning. After a month's confinement in the Tolbooth the youthful malefactors petitioned to be brought to trial, and James was graciously pleased to appoint 1st December as a suitable date for that end. The relative Act of the Privy Council is printed by Steven. Whatever the form of the proceedings, it seems that pressure was brought to bear in high quarters by the boys' relatives, who were persons of influence and position, so that the King was persuaded to pardon them. The chief culprit became in course of time Sir William Sinclair of Mey. He married Katharine Ross, daughter of the laird of Balnagowan, a lady who, like himself, had some experience of judicial procedure, having been implicated in the notorious case of Lady Foulis, "dilatit of certane crymes of Witchcraft," in 1590.

The long list of these picturesque barbaric happenings is brought to a close in the nineteenth century by an occurrence at Edinburgh which I here propose to commemorate. The circumstances of the affair, as briefly set forth by Sir Robert Christison, an eye-witness, in his *Autobiography*, were as follows: "One morning in 1838 a knot of street boys at the College gate snowballed the assembling students, who repaid the compliment with interest. Bigger than boys then joined the fray, which led to a change of weapons. 'Jam[que] fasces et saxa volant.' The conflict soon reached such dimensions as to call for the interposition of the police. But the police interposed on one side only—mistaking their business, which is that of peacemaker, not of partisan. By-and-by the plan they fell upon was to storm the College quadrangle, in which they signally failed. One would suppose that, at this crisis at least, the civic authorities might have bethought them of calling in the aid of the professors, but in place of that they sought the aid of the mob. With their support the quadrangle was attacked again, and again the assailants were

repulsed. Night put an end to the combat, which was renewed next morning with increased animosity. Severe injuries were now sustained on both sides. The conflict continued till night again approached; but, except that a good many bruises were inflicted and some prisoners taken, no impression was made on the defenders of the quadrangle. A bright idea now took possession of the magistrates in command. A wing of the 79th Highlanders was summoned from the Castle, and the quadrangle was carried by four companions of foot, with forty rounds of ball-cartridge in their pouches. The students, retreating to the terraces, cordially cheered the military, but continued in no mood to yield to the police. A professor [Dr. Christison himself] now got leave from the magistrates to address them; and a few words directed to their common-sense induced them all to retire to their homes. The authorities of the city made so much of this disturbance, as to try five chief offenders for riot. But lawyers generally laughed at this device. By the witty counsel for the defence—Mr. Robertson, afterwards on the Bench —the trial was turned into a farce; and after four [three?] days' patient hearing, the judge discharged the prisoners. Nevertheless, at a distance, the snow tournament and police scuffle were long looked at as a formidable riot; and Louis Philippe's Ministers, it was positively alleged, made inquiry whether the row was not part of a general revolutionary insurrection among the University students of Europe. The whole affair was really nothing else than the natural effervescence of youth, mismanaged by blundering functionaries and an ill-trained constabulary."

Some time ago, by the kindness of the late Mr. H. B. Irving, whose interest in everything connected with trials was perennial, I acquired a volume of pamphlets relating to the Students' Riot. This collection, once the property of the great "Peter" Robertson and presented by him to his learned friend J. A. Maconochie, includes (1) a report of the judicial proceedings, prepared from the shorthand notes,

and revised by the judge and counsel; (2) "The University Snowdrop: an Appendix to the Great Trial; containing a selection of Squibs, old and new, descriptive of the Wars of the Quadrangle, and the Consequences thereof; with magnificent Embellishments," consisting of eleven spirited sketches of the chief scenes and characters in the drama, two examples of which are here reproduced; and (3) twenty-three broad-side ballads, or war songs of the alumni, published by certain Edinburgh stationers. From this so ample reservoir my facts are drawn.

On Wednesday, 21st February 1838, Charles John Dalrymple, Alfred Westmacott, John Aikenhead, Robert Scott Skirving, and Edward Kellet, all students of Edinburgh University, appeared at the bar of the Sheriff Court, charged upon the complaint of the Procurator Fiscal with the crimes of mobbing, rioting, and assault, committed on 11th and 12th January, within the precincts of the College and on South Bridge Street. Sheriff-Substitute Adam Urquhart occupied the Bench; Cosmo Innes, Advocate-Depute, assisted by Archibald Davidson, conducted the prosecution; Patrick Robertson and Robert Whigham, the defence.

The youthful prisoners were happy in their choice of senior counsel. Patrick, familiarly "Peter," Robertson was a notable personality at the Scots bar. Rotund and rosy, jovial, wise, and humorous, he was the Andrew Jameson of his day. Not only witty himself, but a source of wit in others, "Peter" is the hero of many a good story, some of which are preserved by Lockhart, by Professor Wilson, and among the choice leaves of *The Court of Session Garland*. You remember how "Peter," the centre of a circle of unreverend juniors round the fireplace in the Parliament House, saw approaching the high-domed head of the Author of *Waverley*. "Hush, boys!" cried he, "here comes old Peveril, I see the Peak." "Ay, ay, man," rejoined Sir Walter, "as weel Peveril o' the Peak ony day as Peter o' the Painch." And at the Theatrical Fund

Dinner in 1827, when Scott dropped his mask of anonymity, he passed a note to "Peter": "Confess something too; why not the murder of Begbie?" Henry Cockburn often mentions him, but the most lively picture of the man is that given by Lockhart in *Peter's Letters*, as presiding, *vice* two presidents retired in the course of the evening either from exhaustion or other cause, at a Burns' Dinner in 1818: "Once in the chair, there was no fear of his quitting it while any remained to pay homage due to his authority. He made speeches, one chief merit of which consisted (unlike Epic poems) in their having neither beginning, middle, nor end. He sung songs in which music was not. He proposed toasts in which meaning was not. But over everything that he said there was flung such a radiance of sheer mother-wit, that there was no difficulty in seeing the want of meaning was no involuntary want. By the perpetual dazzle of his wit, by the cordial flow of his good humour, but above all by the cheering influence of his broad, happy face, seen through its halo of punch-steam (for even the chair had by this time got enough of the juice of the grape), he contrived to diffuse over us all, for a long time, one genial atmosphere of unmingled mirth. How we got out of that atmosphere, I cannot say I remember." Such was the champion whom the students delighted to honour by the title of "Our Glorious Defender."

The evidence for the prosecution, as given by the magistrates, police, and selected citizens, tended to throw the whole blame of the disturbances upon the students. The first witness examined was Bailie Grieve—"asinus sed hominus," a student squib proclaims him—whose shop at the corner of Adam Square (the site is now occupied by Chambers Street) adjoined the College on the north. On Thursday, 11th January, about 1 P.M. his attention was directed to a riot in front of the College; the street was crowded, snowballs were flying from the stairs and Quadrangle where the students were assembled, and the windows of the opposite houses were being broken. He remon-

Our Glorious Defender.

PATRICK ROBERTSON.

(*From a Contemporary Drawing by Professor Edward Forbes.*)

strated with the students, but to no effect. At three o'clock a large body of them marched towards the North Bridge. They assembled in front of the Police Office, where those who had been arrested earlier in the day were liberated. Orders were given to the police to attend next morning to prevent a renewal of the disturbance. On Friday the 12th, at 2 P.M., the stairs of the College were "crammed full of students" armed with sticks, "sharpened at the end as if for stabbing." He again remonstrated with them on the impropriety of their conduct, but his admonitions were received with disrespect. He returned at three o'clock with the Lord Provost and Bailie Sawers; the Provost addressed the students, who took it "very ill." They held the stairs, the police made repeated baton charges, and at each charge prisoners were taken. The magistrates then adjourned to his (Grieve's) shop to consider the situation; they decided to send for the military, as it was "a dangerous riot," so the Provost and Bailie Sawers went up to the Castle in a coach; at four o'clock the troops arrived, and quiet was restored. The police were exhausted by their duties in connection with the trial of the Cotton Spinners. "That was the *other* great trial," interjected "Peter," who had conducted the defence of those worthies on their prosecution before the High Court of Justiciary from 3rd to 11th January, the first day of the College combat. Cross-examined by Mr. Robertson, Bailie Grieve admitted that on Friday the police were sent to protect the students from annoyance by the mob. There were two parties to the quarrel: students and townspeople. The Riot Act was read in the Quadrangle after the soldiers came; no attempt was made to communicate with the professors. Some of the people were assisting the police. The crowd extended from Adam Square to Drummond Street; it was doing nothing and was quite peaceable. There was no "intemperance" on the part of the police.

Lord Provost Forrest — the "Frosty old Fogo" of the ballads—said he saw nothing of the disturbance on

Thursday. At 2 P.M. on Friday, hearing that there was a riot, he went to the College; he found a great crowd of people in the street, missiles flying from the College, and windows crashing every minute. Police and students were struggling on the stairs, the former were trying to force the gates, which were shut against them. Captain Stuart told him his men were exhausted. He then addressed the combatants without effect, the tumult rather increasing, and after consultation it was determined to summon the troops, which he did in person. His Lordship was chaffed unmercifully:

> Studentes inquirant, "Si mater sua cognoscit
> Filium out-esse?" Sed Frosty respondit nihil!

Cross-examined, the Provost was not aware whether or not he was by virtue of his office Rector of the University. It did not occur to him to communicate with the professors before calling in the military. On Thursday afternoon he saw a body of students, 600 strong, parading the North Bridge. "You did not see *me* walking down at that time, I presume?" asked "Peter"; "sed Frosty respondit nihil." A crowd was expected in the city on account of the Cotton Spinners' trial; the coaches and canal boats were searched for undesirables from Glasgow. He saw students bleeding and with broken heads; that, he supposed, was not done by the military.

Captain Stuart, Superintendent of Police, said that on Thursday a crowd of workmen gathered at the College. He cleared the front of the building. Students were snowballing the crowd, and some of them were apprehended; they were liberated the same day. The police were sent the next day to protect the students, who complained of the tradespeople snowballing them. Learning of the riot, he went to the College with an additional force. He found a great crowd, the students holding the gates; they made a sally with sticks, and a conflict between them and the police ensued. He considered the situation alarming and dangerous to life. The students were driven back to the

gates and some were arrested. Part of the crowd got into the Quadrangle along with the police. He had to force the gates in order to rescue his men within. Those apprehended resisted and were hurt; there were injuries on both sides. As his force was insufficient to quell the riot he concurred in sending for the troops. Throughout, the students were the aggressors, and the behaviour of the police was temperate, "considering." Cross-examined, he saw no impropriety on the part either of police or townspeople. Two of the latter were arrested, one for throwing a stone, another for assaulting a student, but they were "helped off" by the crowd. The people who got into the Quadrangle were assisting the police. They were perhaps over-zealous and crushed forward violently; some of them had sticks and used them. Thirty-five students were apprehended. The tumult lasted from two till four o'clock. He himself was never in bodily fear. The police had cleared the stairs before the troops came. If the students had stopped resisting the police, the riot would have been at an end.

Lieutenant Ker said that on Friday the students made a rush from the College and attacked all and sundry with their sticks. He himself was knocked down. The students were driven back; the police attacked the gates, got in, and took the ringleaders. Professor Christison suggested that his men should be withdrawn from the yard, and as this was being done the students again attacked them. In cross-examination, he admitted that the affair of Thursday was merely a snowball bicker; the sally on Friday began the trouble. The people were favourable to the police and were assisting them to keep the peace. About 100 got into the yard. The snowballing by the crowd did not contribute to keeping the peace. No blame attached to anyone but the students, and the general character of the crowd was peaceable.

Lieutenant Thomson corroborated. Cross-examined, he said that the police behaved with singular moderation and

propriety. He saw certain students hurt and bleeding, but had no idea how they came by their injuries. A person named Thomson was poking at the students with an umbrella; he was not arrested, as he was helping the police to keep the peace. On the same principle none of the crowd who struck the students with sticks was taken into custody. The before-cited bard thus commemorates the prowess of this unofficial peacemaker:

> Thomsonus, bullyus in domus ill-famæ Cougatus,
> Armatus umbrello poket Studentes frustra,
> Umbrella shiverabunt, et Thomson cut like the devil.

Hugh Paton, "carver and gilder, *not* glazier," said that the police were defied and obstructed; he considered the behaviour of the students to their fellow-creatures brutal. "Had these fellow-creatures batons or not?" asked Mr. Robertson; witness admitted that they had, but said the students struck first. He was told on Thursday by a student named Jones that there would be a worse row next day, as the students were to come with bludgeons to attack the police.

This closed the first day's proof, in which the prosecutor had things pretty much his own way; but his next witness, Mr. Hutchison, surgeon, put a different complexion on the matter. Though invited to bless the Crown case, like the prophet Balaam on another occasion, the defence got the benefit of his benediction. He said that for two days before the fracas there was a long slide in front of the College. On Thursday morning a number of apprentices and workmen assembled there. These pelted the students with snowballs as they were going to their classes. The students complained of ill-usage, and went in procession along the North Bridge to the Police Office. They arranged to bring sticks next day as the police would not protect them. In cross-examination, he said that the students' complaints were well founded; the crowd prevented them from getting into the College, and assailed them with divers epithets reflecting alike upon their breeding, morality, and political

tenets. (These opprobrious expressions are discreetly rendered by the learned author already quoted: "damnatos puppies, catamitosque Torios"; the principles of the mob, of course, were purely Whig.) He was frequently at the College, trying to collect the scattered members of his class. On Friday the same thing occurred; the students were abused by the mob, whom the police made no attempt to disperse. He was refused by an officer admission to the College. Many of the students were cut and bleeding; those taken prisoner were ill-treated by the crowd. Had the mob been moved on there would have been no trouble. It was largely composed of Tron Church loafers, "usually denominated blackguards."

John Crearar, whose shop was opposite the College, described what he saw of the fighting; he could not say who were the aggressors on Friday; a number of blackguard boys began the trouble on Thursday.

The next witness was P.C. Alexander Gunn, No. 18, the most unpopular member of the force. A truculent ruffian, who had savagely abused the students, he figures prominently in all the ballads of the battle. "Fire away, Gunn!" was "Peter's" greeting, when this paladin entered the lists. After giving, in chief, the official version of the riot, Gunn's fire was drawn by Mr. Robertson. No snowballs, he alleged, were thrown at the students except by two small boys, "who dispersed away immediately after." The crowd used neither violence nor improper language; there never was any rioting on the part of the people and no occasion to remove them. He did not know whether the mob was right or wrong in pushing towards the College. Macdonald, a baker, and others were assisting the police. He could not tell how many students he himself knocked down, whether 10, 20, 50, or 100. He did not remember whether or not he had knocked down a professor: they were all alike "depredators" to him. He had used no abusive language. He did not know how many policemen were on duty that day, perhaps 100; the opposing force

was 30 times as strong. Whereupon the cross-examination continued as follows: "Do you mean to say there were 3000 men armed with sticks against you?"—"If I had had time to count them I would have been better able to tell you."—"And you expect me to believe that?"—"I don't care whether you believe it or not."—"You were quite cool and collected at the time?"—"I was cool in my mind, though my body was warm"—an answer which afforded the ballad-makers matter for endless mirth.

Half-a-dozen lesser satellites of the force told the same tale, and identified the pannels as "depredators"; Macdonald, the baker, who had received 1s. 10½d. for assisting to keep the peace with a stick, endorsed the official story; and Dr. Black, surgeon of police, certified that he had treated two constables for wounds received upon the field of battle. Cross-examined, he admitted attending at the Police Office four students who were severely injured and cut about the head. With the putting in of the prisoners' declarations, which were admitted by Mr. Robertson, the Crown case closed.

The evidence for the defence may be more briefly stated, the rather that it entirely exculpates the pannels of the crimes charged. The first two witnesses, Walker and Maclachlan, whose places of business were opposite the College, saw the whole proceedings. They said that the trouble began by workmen snowballing the students, who at first were very patient. Tradespeople, women, and boys participated in the assault. On Friday afternoon a student who was struck in the face ran out to catch his assailant; he was seized by the police, his friends made a sally to rescue him, and a battle of batons and sticks followed. The crowd and the police began the tulzie; they were acting together, such students as were captured were very roughly handled, and the police behaved with unnecessary violence. Had they dispersed the crowd, there would have been an end of the fray.

Mr. Lawrence Douglas, advocate, said that the students

were hustled by the mob and had to take refuge in the archways. The mob and the police were clearly acting in concert, the conduct of the latter was unjustifiable throughout, and their treatment of prisoners needlessly severe.

Captain Jones, R.N., who lived at the corner of Drummond Street, saw workmen assemble at one o'clock on Friday. Some occupied the entries opposite the College. From their appearance and conversation he gathered that they were met for a disturbance: they were armed with bludgeons, and said that they expected "fine fun." At half-past two an armed crowd rushed "in torrents" into the College yard; some had two hats on, "but only one head each." He tried to stem the rush, but the police refused his aid: their conduct was unjustifiable and disgraceful. When a student was captured, the behaviour of the mob was of the most savage kind, and nothing was done to repress it.

Professor Christison, whose appearance in the box was hailed with cheers, said that from his room in the front of the College he watched the Friday's *mêlée*. There was a great crowd of workmen. One student ran out towards Drummond Street, others followed in a wedge, the police rushed upon them, and a conflict ensued. He afterwards went out to the Quadrangle, where he found the police and mob, who were acting together, fighting with the students. He suggested to Lieutenant Ker to remove his men and clear the area of the mob, which was partially done. No communication was made by the magistrates to the University authorities; there was nothing to prevent them doing so. When the troops arrived the students withdrew to the terraces; he addressed them and they dispersed. Some were thereupon apprehended, which they considered unfair. He had a correspondence with Bailie Sawers on the subject, with a view to their being leniently dealt with. These letters were then read by witness; and a passage in the Bailie's, referring to the students as "a class of young men who, when once they have passed the Ribicon [sic], have

shewn themselves to be somewhat troublesome customers," delighted the audience, and became an "owercome" of the students' songs. The lads, continued Dr Christison, acted throughout on the defensive and with great forbearance; they were under the impression that the magistrates had no jurisdiction within the College area. Workmen of "a very inflammatory appearance" took part with the police. If the crowd had been dispersed there would have been no disturbance.

Mrs. Kennedy, whose shop was opposite the College, enjoyed the distinction of being, with the exception of the Provost's mother who had not a speaking part, the only lady in the cast. She saw a student dragged out of the College by the hair and beset by three men, one of whom was a policeman.

Mr. Eagle Henderson was at the College at 2 P.M. on Friday. The mob and police were attacking the gates, which the students were defending. The police, supported by "blackguards, boys, and carter fellows," rushed the gate. A butcher in a red nightcap led the charge. Such prisoners as were taken were very roughly handled, the police being unnecessarily severe. This closed the second day's proof.

At the resumed hearing, seven students who had sustained injuries gave their several experiences of the campaign. They proved aggravated assaults by the police and their "concurrents," including a butcher, a baker, a drunk carter, and the umbrelliferous Thomson. Some of the students were rendered insensible by blows, many were wounded, and it appeared that Gunn, "the eighteen pounder," as Mr. Robertson pleasantly termed him, had specially distinguished himself by his ferocity. One student was arrested merely for calling, "Shame!" when he saw a companion ill-treated. The tale of Paton, the Crown witness, as to the students' preparation for Friday's fight, was denied by the other parties to the conversation. The defence closed with the evidence of the College janitor, who

on Thursday complained to the police of the mob throwing stones at the gates, but was told to mind his own business; they refused to arrest the offenders. On Thursday he went to the Police Office to lodge a formal complaint; he was informed that they had no time to listen to him and that if he persisted, they would take *him* up! Later, in the Quadrangle, he was assaulted by a collier with a piece of coal in his hand, who said, "I am a constable!" and tried to apprehend him.

The Advocate-Depute then addressed the Sheriff, who sat as judge and jury. The case, he said, was an ordinary Police Court one, and was only brought in that form out of delicacy, to allow the conduct of the police to be discussed. The charge was of mobbing, rioting, and assaulting certain police officers, and persons active in the riot were equally guilty of the separate assaults committed. The attempt to show that the magistrates were terrified and confused had failed, but he admitted that their sending for the troops was a mistake. The evidence of Captain Stuart and his subordinates was unshaken; no attack had been made on their character or credibility except in the case of Gunn, who might be censured for loss of temper but not for wilful deceit or concealment of the truth — having no precise knowledge on the subject of the questions put to him, he did not choose to favour his interrogator with a conjecture. As to Paton, he might have heard the statement he spoke of from someone else and mistaken his informant. Counsel then reviewed the facts of the case: on Thursday, a general snowball bicker, in which the police interfered and were grievously assaulted by the students, and the resolution of the latter to bring sticks next day; on Friday, a phalanx of students rushing towards Drummond Street, beaten back by the police, and holding against them the gates, which, with the assistance of persons in plain clothes, were forced. No doubt the students thought that the College was their castle and that they were entitled to defend it. As the magistrates could

not reach the professors they unwisely sent for the troops. Of course, had the crowd been removed the riot would have ended, but the police had to judge which party was to blame. None of the witnesses for the defence saw the beginning of the disturbance, and could neither know who were the aggressors nor the provocation received by the police which palliated what degree of roughness was used. It was immaterial whether or not the magistrates acted prudently, or whether the police executed their orders with discretion; such proved resistance to authority was improper and illegal, and by every principle of law he was entitled to a conviction against all the pannels.

In contrast to the prosecutor's colourless and half-hearted address the speech for the defence was a pæan of victory in which ridicule and righteous wrath were happily commingled. Mr. Robertson at the outset observed that this was a case which it was difficult to treat except with scorn and laughter. Had he had the honour to be Advocate-Depute—"which, indeed, I once had, but, alas! only for a very short time"—he would have abandoned at an earlier stage such a preposterous, pitiful, and contemptible prosecution. "We are here, my Lord, in a court of justice; we have a libel, we have a judge, we have two Crown lawyers, and we have five prisoners. We have had nineteen witnesses examined on the one side, and eighteen on the other. We have produced in evidence three 'or thereby' bludgeons, and we are engaged at the close of the third day in an investigation which my learned friend says ought to have been settled in the Police Court and in a few minutes. He is right. It ought to have so terminated—yes, I say so too—and that by the punishment of the police and the mob." Of the evidence of the only unbiassed witnesses for the Crown, Mr. Hutchison, the surgeon, and Mr. Crearar, the grocer, his learned friend said not one word; they were important witnesses for the defence. Adding them therefore to his own list, and deducting students against policemen, he had Professor Christison, Mr. Walker of the Agency

Office, Mr. Maclachlan, the bookseller, Mr. Douglas, the advocate, Captain Jones, R.N., and his case was further adorned by the presence of the fair Mrs. Kennedy, the procession appropriately closing with the College janitor. This was a most serious charge which, if tried in another place, might have been followed by transportation; let them see what were the terms of the indictment. "Whereas, by the laws of this, and every other well-governed realm—" Mr. Innes: "Is that in the indictment?" Mr. Robertson: "No, it is not. It is omitted, and no wonder; for the present is *not* a prosecution, I admit, according to the laws of this or any other well-governed realm. Well, then, after naming the students, it goes on to say that they 'have been, all and each, or one or more of them, guilty of the crimes of mobbing and rioting and assault, or one or other of them, actors, actor, or art and part: in so far as, on the 11th day of January, 1838, or about that time, a mob or great number of disorderly and evil-disposed persons did violently and tumultuously assemble'—that is the poor students, I suppose, going to and from their classes—'and did, within the area and precincts of the College or University of Edinburgh, and on South Bridge Street opposite or near to the said College or University, conduct themselves in a riotous and outrageous manner, to the disturbance of the public peace, and to the terror and alarm of the lieges, and did throw snowballs or other missiles at them'—that is, at the lieges. But the outrages did not stop here, for these evil-disposed persons also did throw snowballs at 'several carts and carriages passing along or near to the said street, and at the windows and other parts of the houses or shops or other premises in the said street.' That is on the Thursday, and then the same horrible things are charged on the Friday." (I omit, for lack of space, the "laughter" with which each sentence of this passage is punctuated.) After stating the law in regard to mobbing and rioting, as laid down in Alison's *Principles of Criminal Law*, Mr. Robertson said that all the elements which constitute that

crime were lacking. The students were met there for a purpose perfectly lawful, namely, attending their classes; the extramural mob of Tron Church loafers—those delicate creatures—were not lawfully assembled, and the magistrates and police were bound to disperse them; therefore, to add to all the absurdities of that exhibition, the Crown had got the wrong prisoners at the bar. Further, the crime must be "to the fear of the lieges." Had any of Her Majesty's subjects stated that he was at all alarmed? Even Gunn, though "hot in body," was "cool in mind." The Lord Provost suffered no offence, albeit that "some kind inquiries were made respecting the welfare of one who I trust has lived to enjoy the exaltation of her progeny." When he (counsel) asked the witnesses, "Were you in bodily terror?" they laughed in his face. "Bodily terror from a bicker of the College students? Come, come, you are a well-known joker, Mr. Peter, but that is coming it too strong!" Again, Alison instanced "assemblies for purposes nowise illegal, though sometimes contrary to good morals, as football"—he wondered whether the Professor of Moral Philosophy would agree that football was *contra bonos mores*—"cock-fighting, and the like"—which doubtless meant snowballing. Then there must be "a common design." This was not a meal mob, nor an election mob; it was a mob in search of learning: the students wished to get to their classes, that was the common design. On no ground of law, therefore, could a conviction in that case be secured. With regard to the facts, his only difficulty was to know when to stop, for he had everything to say in his clients' favour and could not even imagine anything to be said against them. Having, with characteristic comments, reviewed the evidence with which the reader is already familiar, Mr. Robertson said that the row was begun by the mob and that the police behaved most shamefully. "The townspeople were supported by a police which is the disgrace of this metropolis, the most expensive, I believe, in Europe, and at the same time, as these proceedings have proved,

the most inefficient and the most brutal." Before the first sally of the students the magistrates, to quell the *forthcoming* riot, sent for Her Majesty's 79th Regiment of Foot. It was a foolish, a preposterous step. The Provost and the Bailie decided to pass the "Ribicon"; they went up to the Castle in a hackney coach. They were afraid of Cotton Spinners concealed in canal boats and in the boots of coaches, yet they sent the troops out of the way to quell a college row! These wiseacres never thought of reading the Riot Act; but the Procurator-Fiscal, knowing that it was unusual to send for the military before that had been done, put a copy in his pocket and marched down to the College. "The drums are beating and the trumpets are sounding while the Act is reading, in order to quell the riot which the police themselves had created, aided and abetted by their extramural force. For although they were wearied out by the Cotton Spinners' trial, they had able aid: they had the red-capped butcher, and the supernumerary baker with his 1s. 10½d., neither more nor less, for one night's service. They had the drunken carter, they had the chairmaker with his umbrella poking about, and they had a collier dug up for the occasion. I trust I may say without offence that he is one of the *lower* orders. They had all this aid, and they were struggling—to do what? They were struggling to force open the College gates, in order that this ferocious mob and still more ferocious police might get at the students who were only doing what was lawful. They never thought of dispersing the mob which was doing what was unlawful—oh, no!—but they gently put them back: 'Adieu, they cried, and waved their lily hands.' They returned, however, again to the charge. 'Come on,' quoth the butcher; 'Strike hard,' quoth the baker; 'I'm a constable,' quoth the collier, with a bit of diamond as his badge of office; 'Remember my old horse,' quoth the carter; 'Follow me, I hope I don't intrude,' quoth Paul Pry with his umbrella. And before all this had taken place, before all this scene of blood, of

desolation and dismay, the Lord Provost, with Bailies Sawers and Grieve, are coolly sitting in the latter's shop, whence, after solemn deliberation, they send for the military to quell that disturbance which was owing to their own stupidity, the ferocity of the mob, and the mingled absurdity and brutality of the police!" He did not suggest perjury on the part of Paton, who was merely a timid blockhead and had dreamed of bludgeons; yet it was the stupidity and fear of this one man which had prevailed on the Provost and Bailie Sawers to pass the "Ribicon." The Cotton Spinners' trial was a tragedy; this was a farce. But the farce had its serious aspect. Were students to be insulted in this way with impunity? Was the University to be thus disgraced? Were the inhabitants to be taxed for a police to beat out the brains of the students of Edinburgh? He called for an inquiry, he called for proceedings against the police, and as a citizen and a gentleman he publicly declared that the matter ought to be thoroughly investigated. Every one of the unbiassed witnesses swore that the police were acting in concert with the crowd and against the students. "That impudent blackguard Gunn —for blackguard I do call him—who did not know whether the police establishment consisted of 100 or 1000 men, who did not know whether he had knocked down 10 or 50 men, who struck the blows, I doubt not, that laid some of these young gentlemen on a bed of sickness—he would bully me at this table, and would presume to talk before this Court in the manner he did; and yet would have you believe that the evidence he gave was trustworthy." In a moving peroration Mr. Robertson besought his clients when they were dismissed from the Bar, as he was convinced they would be, to bear their triumph modestly, and by orderly conduct and attention to their studies to show the authorities that they could exhibit that noblest sentiment of the human heart, forgiveness for wrongs received; and when the excitement had passed away, which was not caused by them but by the folly and recklessness of others, they would have the

satisfaction of knowing that on their side they had acted an honourable part, and had done nothing inconsistent with that dignity and high honour a deep sense of which he trusted the Scottish youth would always cherish.

When the loud and long-continued cheering which followed these remarks had subsided, the Sheriff pronounced judgment. His Lordship observed that in trying the case without a jury he was placed in the invidious position of having to determine both as to the law and the credibility of the evidence. In regard to the proceedings of Thursday, he was satisfied that there was no evidence upon which the first charge could be maintained. On Friday the magistrates sent the police "to protect the students." From the evidence of Captain Jones it was quite clear that a body of workmen, armed with sticks, were employed by the police, and that other persons so armed occupied the entrances and doorways opposite the College. These preparations were not for a mere snowball bicker. The students also had sticks, but they had a perfect right to go to the College and the people had no right to be loitering there. Their demeanour and language convinced Captain Jones that these persons were preparing for a fray. As the police officers were not upon their trial his Lordship would not comment on their conduct, whatever opinion he might have formed of it; but the violence to prisoners proved against the policemen was certainly culpable in a very high degree, and the behaviour of the mob was disgraceful. The snowballs thrown at the students by those who had already exasperated them, which led to the sally, was the first aggression; after that, the police regarded the mob as friends and supporters, and their joint energies were directed against the students. Any damage done to property being over, the police were not justified in forcing themselves, mixed with members of the mob, into the College yard. The first provocation was not given by the students, and consequently not by the accused. His Lordship there-

fore found the pannels not guilty, and dismissed them *simpliciter* from the Bar.

So ended, in the triumphant acquittal of the "depredators," the last action in that notable campaign, which, if it redounded but scantly to the wisdom of the City Fathers and the humanity of the ostensible preservers of the peace, at least afforded the citizens three days' amusement and inspired to entertaining purpose the songful sons of Alma Mater. Not all their strains are admirable; but the dog-Latin fragment in the Virgilian manner, so often quoted in this paper, entitled *Frosteïdos* and commencing:

> Frosty policeque cano, Reekie qui primus ab office
> In High Street, ad College veniebant quellere riot,

is a worthy pendant to the racy *jeu d'esprit* of Drummond which furnishes my inceptive tag.

The students' witty champion, who five years later as Lord Robertson ascended the supreme Bench, was less happy than his clients when he himself adventured upon the perilous seas of poesy. Lockhart appended by way of epitaph to a review in the *Quarterly* of his Lordship's volume of reprehensible verse, *Gleams of Thought reflected from Milton, etc.*, the following pungent distich:

> Here lies that peerless paper peer, Lord Peter,
> Who broke the laws of God and man and metre.

It is recorded of "Peter" that he waxed exceeding wroth. This probably was the sole occasion on which that genial jester failed to see the joke; but the man was mortal, and had written a book.

THE TWENTY-SEVEN GODS OF LINLITHGOW

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THE TWENTY-SEVEN GODS OF LINLITHGOW

> Thou canst not slave
> Or banish me ; I will be free at home,
> Maugre the bearde of greatnesse.
>
> —*Antonio's Revenge.*

THIS title is not my own ; neither is it taken, as might appear, from one of Lord Dunsany's delicate and fantastic tales. It properly belongs to a curious scarce old pamphlet by a learned scholar and grammarian, Mr. James Kirkwood, in which he sets forth at length the story of the "weel kenn'd" plea so long depending between himself and his patrons, the Provost, Magistrates and Council of Linlithgow, together with the manifold and grievous wrongs sustained by him at the hands of that unconscionable Corporation. There are in fact two accounts of this memorable business, issued by Kirkwood in his own defence: (1) "A Short Information of the Plea betwixt the Town Council of Lithgow and Mr. James Kirkwood School-Master there, Whereof a more full Account may perhaps come out hereafter"; and (2) "The History of the Twenty-Seven Gods of Linlithgow: Being an exact and true Account of a Famous Plea betwixt the Town-Council of the said Burgh and Mr. Kirkwood Schoolmaster there. *Seria Mixta Jocis* . . . Edinburgh, Printed in the Year MDCCXI," in which the promise of the earlier tract is amply fulfilled.

The author himself disclaims responsibility for his title. In an "Advertisement" printed on the back of it he says: "Pray, good Reader, do not stumble at the odd kind of

Title given this Book : It not being Mr. Kirkwood's Contrivance, but what the Members of the Town-Council assume to themselves, as you'll see elsewhere"—which we shall in due course do. Of the fuller account of the affair he remarks that it "well deserves to be intitul'd *The History of the twenty-seven Gods of Lithgow;* wherein you shall see such ridiculous and droll Stuff, such wild and extravagant Acts, such cruel and illegal Pranks, that tho' you made search into the whole Records of all the Burghs in this Kingdom from their first erection to this day, you shall not meet with any thing that can parallel this." That it were idle to set bounds to the folly and wickedness of mankind in general and of Town Councils in particular, lovers of Old Edinburgh, lamenting the civic vandalism of which she has been the victim, would be the last to deny ; but Mr. Kirkwood's claim for the unique and pre-eminent villainy of his municipal oppressors may be admitted. The story, he further observes, "looks liker a Romance than a Law plea, and would be no ill Subject for a Comedie, *if it could end well*" ; and of a truth it does form a most diverting interlude in the dour ecclesiastical drama of which Scotland was so long the theatre. Unluckily the powers responsible for the production of the piece forbade a happy ending : Virtue indeed was vindicated, but Vice remained practically triumphant and unpunished.

From the flight of King James in December 1688 to the establishment of Presbyterianism in June 1690, known in history as the Revolution period, the affairs of the Kirk in Scotland were, even for them, in a state of more wild confusion than usual. The Abbey Church at Holyrood was plundered ; and the "rabbling of the Curates," as described by Patrick Walker, the biographer of the Saints of the Covenant, soon showed the Episcopal clergy what they had to look for at the hands of their Presbyterian brethren. The position of an established minister must at that date have implied a very insufficient sense of stability. It is in the early stages of those turbulent doings that the incidents

with which we are concerned took place. The popular belief in the immense preponderance of the Presbyterian element at the time has been well described as an interested and modern assumption. Dr. Alexander Carlyle, the genial minister of Inveresk, himself admits "that when Presbytery was re-established in Scotland at the Revolution, after the reign of Episcopacy for twenty-nine years, more than two thirds of the people of the country, and most part of the gentry, were Episcopals." (*a*)

A notable exception to his class was one Walter Steuart of Pardovan, in the county of Linlithgow, a gentleman of views violently Presbyterian, and the author of an exhaustive (and exhausting) treatise touching the worship, discipline and government of the Kirk.(*b*) His was the moving spirit in the Linlithgow Town Council, and when we first make his acquaintance he was about to be elected Provost of the burgh. A young man for so considerable an office, he had received his early education in the local grammar school at the hands of Mr. James Kirkwood. Whether or not the dominie had spared the rod, it is clear that Pardovan was a spoilt child.

Since 1674 Mr. Kirkwood had held the post of schoolmaster at Linlithgow, bestowed upon him by the then Town Council. At the time of his appointment he was "Governour to my Lord Bruce," son of the Earl of Kincardine, at the College of Glasgow, where he lodged with Dr. Burnet, then Professor of Divinity there, and afterwards the celebrated Bishop of Sarum. Kirkwood was a scholar of repute, "being Famous for his special skill in Teaching Youth, particularly by his framing and publishing a new Latin Grammar (*c*) and Rhetorick,(*d*) very much approved by most of all the Learned Men of this Kingdom,"

(*a*) *Autobiography*, 1860, p. 249.

(*b*) *Collections and Observations Methodiz'd . . . in Four Books.* Edinburgh, 1709.

(*c*) *Grammatica Despauteriana cum nova novi generis glossa.*

(*d*) *Rhetoricæ Compendium, cui subjicitur de Analysi Tractatuncula.*

and it was not without "very much entreaty and good offers" that he was prevailed upon to accept the duty of giving the young of Lithgow the benefit of his experience. He was most particular as to the conditions of his service, refusing to be "stinted" or limited as regards its duration; and he was admitted "in general and absolute terms, as all Professors of Liberal Arts use to be, implying *Ad Vitam vel Culpam*, as his Act of Admission bears." A yearly salary of 400 merks was the measure of his remuneration. So for fourteen years he continued to discharge his functions "to the great satisfaction of that place, living inoffensively without the least shadow of any stain, and duly receiving all the Emoluments and Profits" pertaining to his office.

But, alas, when King James so inconsiderately cast away his crown he also disposed, among other things more momentous, of the poor schoolmaster's peace of mind. Among the minor consequences of the Revolution was the turning out of the Jacobite Town Council, their place being taken by Presbyterian Whigs of the deepest religious and political dye. Kirkwood was something of a rare bird in those days: a broad-minded tolerant man, of moderate principles in Church matters, as became his philosophic calling. Though himself adhering to the Episcopal Church of Scotland as by law established, he tells us that "he blames no Man for being of this or that Opinion, especially in Things that are of themselves not simply necessary to a Christian Life; and craves the like Favour of them: Humbly judging private Persons are to keep within their Sphere, and for Peace's sake to submit to many things and to comply with them, tho' inconvenient in their Judgment, yet not sinful, such as are most of these Things which make so great Stir in this Kingdom and destroy the very Life of Christianity, which consisteth in Sobriety, Justice and Devotion; but these are eaten up and consumed by the Unchristian Management and Prosecution of small and inconsiderable Differences. We tithe Mint and Cummin,

and omit the main and absolutely necessary Duties of our Religion." These sentiments, however praiseworthy, proved highly unpalatable to the new authorities, who, in Kirkwood's phrase, "being all Biggotly Presbyterian," had scant sympathy with such views, and determined to punish their exponent by forcing him from office and depriving him of his means of livelihood.

On 12th April 1689 the pious and purified Town Council "sent in a most tumultuous Manner a Party of Musqueteers" to command the two parish ministers to remove from their charge, "that they might place better in their Room." Until possession of the parish church (*a*) could be obtained it was arranged that the true evangel should be preached "in the Provost's (*b*) own Kitchin"; and on the following day Pardovan "in a very magisterial manner" intimated to Mr. Kirkwood that unless he attended these extra-mural lectures "he should not be long Schoolmaster in Lithgow." Mr. Kirkwood very properly replied that he had "no freedom" to go to their meeting-house—probably he deemed the venue savoured more of digestive than of devotional exercises. "He refused to forsake the publick Place of Worship till either the Convention of Estates that was newly sit down, or the then ensuing Parliament, should make a change in the Government [of the Church]." In whatever alteration might so be made he was prepared to acquiesce, "for he thinks it his Duty to follow, and not to run before the Laws in these matters." There was certainly nothing restrictive in his religious opinions. "He can hear Presbyterian, Episcopal, Papist, yea, a Turk or Heathen make a good discourse," but at that juncture he was sure that his going to the meeting-house would give offence to many on both sides; "some were already stumbling to see him so frequently conversing with the Provost, and he can

(*a*) The venerable Gothic Chapel of St. Michael, in which James the Fourth received supernatural warning of the disaster awaiting him at Flodden.

(*b*) Pardovan was then Provost designate.

instance them that cry'd to him in the High Street, 'Turn Coat, Turn Coat!'" Those who did so were strangely ill-informed as to their fellow-townsman's character.

A fortnight later Pardovan was elected Provost. He at once sent for the schoolmaster and urged him to attend the meeting-house on the ensuing Sabbath, "to countenance his Lordship's first Entry there"; but Mr. Kirkwood declined. To do so would be, he said, to forsake all his own friends and learn a new language; to abandon the form of worship "establish'd by the supreme Powers of the Nation and go to a private Meeting-House (Pardovan's own Kitchin), then only connived at or at most tolerated, neither Threats nor Allurements can prevail with him." Pardovan used all methods and arguments to persuade him to forsake the Church, "thinking if he left it many would follow his Example. Frequent communing they had about it, but all in vain." Finding him so firm the Provost lost his temper, of which he appears to have had imperfect control; "You have," said he, "the most malignant Spirit of any Breathing, and ought not to be conversed with." This "in a great Rage and Passion, on the High Street, and in view of many People."

The magisterial vengeance was first manifested by the Provost advising divers persons of quality to withdraw their children from the school, in which spiteful scheme, owing to the pusillanimity or sectarian bias of the parents, he was partially successful. His next step was to quarter on Mrs. Kirkwood, in her husband's absence "in time of School Vacance," four men and four horses, although none of the neighbouring households had a single soldier billeted upon it. "Had Mr. Kirkwood been at Home, he would have given them a better Stable in the middle of his School, and he was sure to furnish them with as many old Theams and Grammars as their Horses could eat several Months." These measures failing signally to subdue the dominie's spirit, the Provost and Council on 12th October "made an Act, reducing his Salary from 400 to 300 Merks

a Year." This they did, not only without his consent, but without his knowledge, the formal agreement between the parties being treated, *more Germanico*, as a scrap of paper. On 19th October the Provost sent for Mr. Kirkwood and intimated to him the Council's decision. "If you will not submit to it," said he, "you must flit and remove." "That's another Question," replied the schoolmaster, and a vexed one indeed it was to prove. Next day two of the Bailies called upon him "to see if they could make up the Peace." As the parties were coming to "a good Agreement" the Provost burst in upon their deliberations. "Master Kirkwood," said he, "you cannot but acknowledge that you are exceedingly obliged to the good Town, having gained in it all you are worth; and therefore you ought to do nothing that may any way tend to its Disadvantage." The dominie returned a dignified answer. "That I am obliged to the good Town I will never deny, for I have met with very much Kindness from all that I have had to do with. Yet I hope you will give me leave to say the Obligation betwixt the Town and me is reciprocal. I am obliged to it, so it is to me; and if I have gain'd any thing 'tis with the Sweat of my Brows in a most honest and lawful manner." So far from owing to the burgh everything he possessed, he pointed out that he had "a tolerable good Portion" from his parents, "got considerably" with his wife, and to say nothing of other services, came from a very honourable and profitable one in Lord Kincardine's family, where he gained both gold and silver. "So you see," he concluded, "I came not to this Place like a Beggar, as your Words import." To which the Provost rudely retorted, "You would rake Hell for the 100 Merks we have taken from your Salary." After some further expressions of magisterial tact and delicacy "they parted not very good Friends." That night Pardovan wrote to Edinburgh for a new schoolmaster; and next day "one Mr. Binny" came from the capital, who on 26th October was "settled Schoolmaster

by an Act of Council, and Mr. Kirkwood ordained to remove at Martinmas then next."

On another occasion the Provost, in face of the Council, called Mr. Kirkwood "Sirrah," and "cry'd with a loud Voice, 'Hurry him out, hurry him out!'" "I taught you English, Latin and some Greek," rejoined the dominie, "and now 'tis not amis I teach you some Morals also. It would seem your Lordship has forgot that Saying of the Heathen Philosopher, *Honor est in honorante.*"

Mr. Kirkwood continuing unshaken by these official thunders, the Council passed an Act of Amerciament, whereby they fined him in 200 merks as being "A Reviler of the Gods of his People." "By Gods," he explains, "they mean the 27 Members of the Town Council, the Provost, Four Bailies, Dean of Guild, Treasurer, Twelve Counsellors, Eight Deacons; so that the Websters, Sutors and Taylors in Lithgow are Gods, forsooth! They alledging (for Mr. Kirkwood positively denies it) he said, 'The Town Council may think shame of their Actings.'" No doubt Mr. Kirkwood was properly punished for his folly if he in fact deemed the magistrates capable of contrition. On 11th November they sent their officers to the school, "and most violently extorted the Key from him"; on the 16th they summoned him to remove out of his house. "A very seasonable Time indeed, in the Cold of Winter, betwixt Terms to flit with a Family of many young Children." This did "a little chaff him," and made him think upon "some Remedy for these Evils." He had too just ground to appeal from them, who were both judge and party, to a more impartial judicature. He therefore went to Edinburgh, where, having obtained legal advice, he presented to the Court of Session a Bill to suspend the Act depriving him of office, another to advocate (review) the cause of removing from his house, and a third to suspend the Act anent the fine. Thus were well and truly laid the foundations of the great cause of *Kirkwood* v. *The Gods of Lithgow*, which might have been cited as a precedent for

the more famous but less flagrant case of *Peebles* v. *Plainstanes*. What sort of temple was raised thereon to Justice we shall see in the sequel.

To show the kind of men with whom he was contending, Mr. Kirkwood gives many instances of municipal unwisdom and extravagance for which I have no space, but his forecast of the entertainment provided in his longer tract is sufficiently quotable. "Here you'l see one Baily causing drag another to Prison for words that had past betwixt themselves at Court; and he breaking Prison, is hal'd to it again by his own Officer to the great amazment and laughter of hundreds of People. Here you may read how one Baily calls two in face of Council, 'Perjur'd Villains and Knaves.' Here you'l see some Burgesses, even of the best rank in the Burgh, staged for not taking off their Cape when they past by the Provost in the street, tho' standing at a tolerable distance; others, for taking it off and making too low a leg. In a word, innocent, harmless, dumb Beasts do not escape their fury, for Baily Turnbul shut up in closs Prison within the Tolbooth a poor man's horse a night and a good part of two days, for tasting a little of the grass in the Churchyard, himself being Jaylor, not daring commit the keys to an Officer, positively refusing to let the poor man give his own horse a peck of draff that he had brought for his supper." Such examples of sweet reasonableness are indeed enlightening with reference to the treatment later meted out to Mr. Kirkwood.

After the cause had been several times debated at the bar, the Lords found that the Town could not remove him either from his charge as schoolmaster or from his house "at that Time, upon that Ground, and after that Manner," as their interlocutor of 12th December more fully bears. Next day the Town presented a petition desiring a new hearing on other grounds, which was granted. The point the Town had to prove was that Mr. Kirkwood *did* demit or quit his charge, and the Court had found that his refusal to serve upon a diminution of salary was no demission. At

the next hearing Mr. Stewart,(*a*) counsel for the Town, adduced two fresh arguments in support of his contention: (1) that Kirkwood took leave of his scholars and exhorted them to be obedient and submissive to their new master; (2) that he went into the school and welcomed that gentleman "by taking him by the Hand, and wishing him all Joy and Happiness in his Charge." These allegations "made Mr. Kirkwood's Advocates look one to another"; but being matters of fact, he felt he was the fittest man to answer for himself. He therefore solemnly assured the Court that the statements were "meer Falsehoods and Lies, contrived to carry on an unjust Cause." And plainly any such congratulation of his successor, if offered, could in the circumstances only have been intended as ironical. "Mr. Stewart," said my Lord Aberuchill,(*b*) "speaks as he is informed." "I'm sorry," replied Mr. Kirkwood, "that such Informers should be our Reformers." So the Lords confirmed their previous interlocutor, and suspended the fine, "which before, upon a Mistake" had been decided in the Town's favour. Thus in the first round the dominie was completely victorious.

The next creation of the Provost's fancy was "a deep Design or (to give it a more proper Name) a hellish Plot," contrived by him against the schoolmaster "to prove him Perjur'd, and thereby to make him Infamous for ever." He was cited before the Council to hear the members judicially declare that he *did* "demit his Charge in Face of the Council without Qualification," and had therefore sworn falsely before the Lords at Edinburgh. Some of the councillors hedged: "they did not distinctly remember"; but the majority supported the Provost, and the finding became that of the whole. On 25th December they passed a new Act ordaining Mr. Kirkwood to remove at Candlemas:

(*a*) Later Lord Advocate Sir James Stewart, popularly known as "Wily Jamie" on account of his Lordship's singularly ingenious methods, professional and political.

(*b*) Sir Colin Campbell, appointed a judge at the Revolution.

"Thus, when others were making merry with their fat Goose Pyes and delicate Dishes, poor Kirkwood was amused with terrible Threats." The dominie promptly sought suspension in the Court of Session; and the cause having been several times debated before Lord Philiphaugh, (*a*) his Lordship on 28th January 1690 ordered both parties to lodge informations or written pleadings, when he would report upon it. This order was duly implemented by Mr. Kirkwood; but the Town—"O Treachery, O Treachery! Treachery in its highest degree"—instead of lodging their information presented a petition for a new hearing before report. This the Lords, "suspecting no Deceit," allowed, but in the meantime "discharged any Execution to be used against the Suspender." That long-suffering litigant's mind was thus comparatively at ease, but he reckoned, as we shall see, without his Provost.

The debate began on Tuesday 4th February, and immediately it was over Mr. Kirkwood received from his wife a letter informing him that the magistrates had on the 3rd forcibly ejected herself, her children and servants from his house. The lady wrote in French, and "so scrimply and overly" that it did not clearly appear whether the outrage had actually taken place or was only "minted" (aimed at). Kirkwood at once showed the letter to Lord Philiphaugh, who summoned both parties to the bar. The Lord Advocate (the Master of Stair) (*b*) and Mr. Stewart represented the Town; Sir Patrick Hume,(*c*) Commissary Dalrymple (*d*) and Mr. William Monypenny appeared for the schoolmaster. His counsel "immediately fall upon the Points," challenging the Town's proceedings as the height of injustice, "an exceeding great Contempt of Authority, and an unparallel-

(*a*) James Murray, appointed an ordinary Lord of Session in 1689.

(*b*) Sir John Dalrymple, eldest son of Lord President Stair, and afterwards first Earl of Stair.

(*c*) Of Polwarth, the friend of Pope, Swift, and Arbuthnot.

(*d*) Sir Hew Dalrymple of North Berwick, third son of Lord Stair, who succeeded his father as President of the Court of Session.

able Instance of a treacherous and deceitful Dealing with the Lords." Stewart denied all knowledge of the Council's action, and said it was "a mere Calumny." The Lord Advocate, however, admitted that if it were true his clients had "hugely prejudiced" their case—"and so went from the Bar." On the 6th, the cause having been reported, the Lords sent it back to the Lord Ordinary "to discuss the Reasons of Suspension upon the Bill"—which one would think had already been sufficiently done—and meanwhile stopped all further execution. The points remaining for discussion were, says Mr. Kirkwood, "Whether or not 'tis in the Town's Power to lessen his Salary; Whether they can deprive him of his Office, without a Fault, giving him a fair and legal Warning? etc."

He was anxious to know before returning to Linlithgow "if now there was any Hazard from the Town"; but the several Lords of Session, Advocates, Clerks and Writers whom he consulted "all with one Voice said there was no Ground or Cause of Fear." Still, to make assurance doubly sure, he waited upon Lord Philiphaugh, and asked for a protection under his Lordship's own hand. "'"Tis not the Custom,' replied my Lord, 'nor is there any need to give such a Paper; I assure you, Mr. Kirkwood, they dare not meddle with you.' 'My dear Lord,' said Mr Kirkwood, 'I know them People better than your Lordship; Ignorance, Malice and Fury, what dare they not do? They are truly turn'd mad and distracted because I have hitherto carried the Plea. A Paper, my Lord, under your Hand, questionless, if anything can do it, will put a stop to their Rage. Grant me this one Request for God's sake.'" So the judge good-naturedly gave him the order he required, and with this in his pocket the dominie set out for home, his heart considerably lightened.

On his arrival there on 8th February Mr. Kirkwood duly intimated his "protection" to the Council. He found his family reinstated; the ejectment, which had been carried out at sight of Bailie Higgins, as explained to Mrs.

Kirkwood by that dignitary, was merely a legal fiction: they were thrust out of doors, but nothing was done to hinder their return. "O Heavens! O Earth!" exclaims the schoolmaster, "We must use, says he, the Formality of Law; and yet at the very Minute the Word is warm in his Mouth he is trampling both Law and Gospel under his Feet, he goes over the Belly of Law, and certainly acts contrary to the Dictats of his own Conscience," being well aware of the terms of the Lords' interlocutor. Soon afterwards, this legal formalist "retired into Holy Orders, and was settled Minister of the Gospel, some place in Tweedale"—the re-established Kirk at first found some difficulty in obtaining a suitable pulpit supply, as this singular appointment proves—"What his Carriage has been since, is out of our Road to enquire."

Now the technical tactics of Bailie Higgins had afforded no satisfaction to the Provost's more practical mind. So soon as he learned that Mr. Kirkwood had come home he "caus'd ring the Council-Bell," and after a brief conference with his colleagues, despatched four officers to the dominie's abode with the view of giving substance to the bailie's fiction. The magisterial myrmidons "in a most violent manner break up the Chamber-door wherein he was, and first take the Keys out of his Pocket and then drag himself, Wife and Six young Children most barbarously down Stairs. Mr. Kirkwood, thinking to save himself by laying Hands on the Horns of the Altar (for indeed a Man's own House is his Sanctuary), clasp't his Arms closely round about the Stoup of a Bed; but these rude fellows tug'd so lustily that had he not quickly let go his grip, they had certainly carried away the Trunck of his Body. Thus Mr. Kirkwood in a Moment's Time was made poorer than Job, for *he* still kept his House and had something to satisfy Hunger; but Mr. Kirkwood could not come by one Crum, as you shall presently hear."

Even more grievous was the case of his wife. Barefooted and clad only in her "Night-Cloaths," the poor

woman, who was then in a delicate state of health, was flung into the street, the ruffians refusing to let her put on her shoes or "cast any loose cloath about herself." So great a shock did she sustain by reason of this ill-usage that the mere sight of these officers ever after caused her extreme terror, "albeit her Husband used all the Rhetorick he was Master of to discover the folly of that Passion; so that at last he was forced to send her to Edinburgh." The lady, he points out, might have looked for better treatment at Pardovan's hands, she being herself of gentle blood, and her brother, Captain Van Beest, of Colonel Ramsay's regiment, having "behaved so well at Killichranky." This hero's name is pleasantly reminiscent of *Guy Mannering*. One of the children, who had long been ailing and was "so extenuated that it would have pitied an Heart of Stone to see her sit by the Fire-side," was cast out "to bath in the frosty Air of the cold Winter," the mother not being suffered so much as to wrap her in a blanket. The child soon afterwards died, and its blood was surely on the Provost's head.

Mr. Kirkwood, meanwhile, was dragged off to the Tolbooth, and shut up in a cell along with a minor malefactor, then in duress. His wife besought the magistrates to let her have some food and clothing from her own house, but this they flatly refused, "unless her Husband would subscribe a Paper"—which was indeed to let the cat out of the bag—the Provost further threatening to have him driven furth of the town "by the Hand of the Hangman." That night Jerome Hunter, the Treasurer, came to the prison and invited the captive to sign his demission, when all would be well; but the doughty dominie indignantly declined to do anything that might prejudice his just cause. His spirit was unsubdued, and "tho' in no very merry Fit, he drol'd a little with the Treasurer," telling him that if the magistrates would shew no pity to him and his family, *who were rational creatures like themselves*, yet they might have mercy upon the harmless hens and chickens in his

house, that were like to starve for hunger: if they would not feed them, it were more humane to kill and eat them. The delightful irony of this passage was thrown away upon the Treasurer, who doubtless was as thick-headed as his colleagues. Charitable neighbours gave shelter to the children and servants, and "by Intercession of a Gentleman"—probably a unique specimen in Lithgow at that time—Mrs. Kirkwood was permitted to share her husband's cell, where the afflicted couple lay on the cold stone floor "all Saturday and Sunday nights," 8th and 9th February.

On Monday morning Pardovan sent his officers to tell the prisoner "to provide an House within an Hour to put his furniture in." Mr. Kirkwood replied that his furniture was in his own house, and he had no mind to remove it; whereupon fresh orders were issued that he should be haled out of the Tolbooth to see his goods ejected. "Out I will not go," said he, "till I know who put me in, and for what crime I am imprisoned." The matter being referred to the Provost, that despot "refused to answer any of these Questions." The captive was accordingly dragged back to his dwelling-place, where he found eight men, led by James Muckle, Deacon of the Wrights, "with Hammers and other Instruments fit for ejecting his Goods." These ministers of justice proceeded "to break open what Doors, Presses and Trunks were fast in the House, and to throw out all the Furniture, not into the Closs, which was a Place of some Security and not very nesty, but into the open Street, a dirty, unsecure and disgraceful Place, in view of the World." Fine Dutch presses were smashed in pieces, porcelain and glass broken, bed and chamber hangings torn and spoiled; forty large illuminated maps and charts, many rare pictures and other ornaments, were "pull'd down in a Moment's time by ignorant and rude Fellows, design'dly abusing them that Mr. Kirkwood might cede from his Right." Chiefly he laments the ruin of "1800 Grammars in loose Sheets, printed in London"—the remainder of his *magnum opus*. Some of the furniture was thrown from the third and fourth storeys

into the churchyard, many things were "carried away by People and never afterwards seen," and the residue "sustained by this Ejection great Hurt and Dammage." The only room in the house to escape the fury of the Provost's satellites was the dominie's own study or closet, which, as we shall see, was to form the subject of a separate outrage later.

When at 6 P.M. the work of destruction was complete—they had been at it since 10 in the morning—the prisoner asked how he himself was to be disposed of. "They told him they did not know; but he was to wait there until all the Goods were carried off the Street into Houses, and then they were ordered to go to the Provost to ask what to do with him." So soon as the officers had withdrawn upon this errand, Mrs. Kirkwood "went and came by the Loch side (that she might shun the gazing Multitude)," where she was forced to perform her necessary ablutions in the icy water. Her husband meanwhile "slip't out and went up to the Palace, about 20 paces distant, a Place of Security, being a Sanctuary into which the Town's Officers dare not set their Foot," where he took the freedom, "even in the Earl of Lithgo's absence," (*a*) to call for and obtain some much-needed refreshment and rest: he had been fasting for twenty-four hours. "While he was very busy with a Dish of good Collops in the Earl's House, one of the Servants comes running, telling the Officers were going up and down like distracted Men, crying, 'What will we do? what will we do? the Provost will slay us!'" After some hours' repose Mr. Kirkwood, "about 2 or 3 in the Morning, by the Help of the Moon, came stepping through Dub and Mire (for he kept not the common Road for fear the Provost's Hounds should have catcht him) into Edinburgh, without Coat, Cloak or Staff, for he knew not what was become of them nor in what House to cause seek them. Thus he escaped out of Prison and yet did not break it;

(*a*) The Earls of Linlithgow were hereditary keepers of the Royal palace from the reign of James the Sixth until their forfeiture in 1715.

got from the Hands of the Officers, yet run not from them."

To explain how he thus made himself at home in Lord Linlithgow's apartments, Mr. Kirkwood tells us that in happier days he had enjoyed the familiar friendship of that nobleman, being often invited by him to the palace, "especially in the long Winter Evenings," on which occasions "now and then they took a Game at Chess." No doubt his Lordship (*a*) esteemed the worthy dominie's learning, humour and good sense, qualities at the time somewhat to seek in Lithgow. The Royal palace of which he was the constable, the birthplace of Queen Mary, was then intact and habitable, and so continued until its wanton destruction by the Hanoverian troops in 1746, after the rout of Falkirk. When Hawley's dragoons lit huge fires in the rooms, Mrs. Glen Gordon, the chatelaine, who had entertained the Prince there on his march upon Edinburgh the year before, remonstrated with the General on the reckless conduct of his men; but that unhappy warrior said they might burn down the palace for all he cared. "Weel, General," rejoined the dame, "*I can rin awa' frae fire as fast as you!*" and so took horse for Edinburgh.(*b*)

On the Saturday of his incarceration our indefatigable litigant had found means to write to the Lord Advocate, complaining of his ill-usage, and also to his legal advisers in the capital, instructing them to proceed against the Provost for wrongous imprisonment; and by Monday morning the news of the fresh outrage of which he was the subject "run through the City as if it had been put by Tuck of Drum." No sooner was the report spread abroad than the prisoner himself appeared among the citizens on the causeway of Auld Reikie, and "whether it was Matter of greater

(*a*) George Livingstone, fourth Earl of Linlithgow, who had commanded a company of the King's Life Guards at Bothwell Bridge, and at the Revolution was superseded by Pardovan as Provost of the burgh.

(*b*) Collie's *Royal Palace of Linlithgow*, p. 23; Waldie's *History of Linlithgow*, p. 73.

Astonishment to the Lords of Session, Advocates and many Hundreds of other People to hear one Minute that Mr. Kirkwood was lying in Prison in Lithgo, or in the next to see him walking at the Cross of Edinburgh, is not easy to tell." If he had been his own ghost, he says, his appearance could scarcely have caused a greater sensation; "in a word, had he return'd after 7 years' Captivity among the Turks, he could not have received a more hearty Welcome and been more troubled with Questions." And though everyone was sorry to hear of the barbarous treatment he and his family had met with, "yet the gravest of them, and his greatest friends, could not contain themselves from laughing at the odd Circumstances of the Story." Verily, but for his possession of the saving grace of humour, the poor schoolmaster might well have sunk beneath the accumulating burden of his woes. "If Men be thus used, or rather abused," he quaintly observes, "they had better go keep Sheep than be at vast Pains and Expence to fit themselves for training up of Youth."

At a consultation with his counsel the learned gentlemen were of opinion that the magistrates' behaviour "was a more atrocious Crime than the Lords of Session could punish, and properly belonged to the Secret Council." The Town had in effect "thrown filth and mire at the Faces of the Lords and spit in their very Countenances, bidding them utter Defiance."

On Wednesday 12th February, "as he was coming out of the Countess of Kincardin's Lodging"—Lord Kincardine, it will be remembered, was his former patron—Mr. Kirkwood met the Lord Advocate, to whom he had written from Linlithgow, pointing out that though his Lordship was counsel for the Town, "yet now he [as Public Prosecutor] behoved to turn Sail, and strike in with him [Kirkwood] in Matters of Riot." If the metaphor was mixed, the argument was sufficiently sound. "'We are well met,' saith my Lord, 'I received your Letter, I know the whole Affair; they are wild People you have to do with; I would advise

you to leave them. Will you accept of 50 Pounds Sterling and pass from this Riot of imprisoning you, and be pay'd up to this Day, of Salary, School-wages and any thing else that is due you as School-master? and besides they will pass from the Fine, for now they fear you. You need not doubt but you will get a Place.' 'Alas, my Lord,' replied Mr. Kirkwood, 'I find you know not all my Business. That they did on Saturday is but Bairn's-play by what they did Yesterday. Fifty Pounds, my Lord! many Fifties will not repair my Loss. I'm ruined. They have thrown all I have out into the open Street, broken and destroyed every thing.' 'They are certainly gone mad,' said my Lord, lifting up both his Hands; and with that run away." Alan Fairford fled from *Peebles* v. *Plainstanes*; this, as we have seen, is the second occasion on which *Kirkwood* v. *The Gods of Lithgow* put the Lord Advocate to flight.

Next day the dominie, being in the Parliament House, was approached by Mr. Stewart. That wily counsellor, "with a Smile, took him by the Hand very heartily," and hoped that he would now "agree" with the Town. Mr. Kirkwood dryly remarked that he (Stewart) had been so far the chief obstacle to such agreement, having opposed a settlement until the decision of the Court was obtained; he (Kirkwood) might now retort that the affair could not be settled except by sentence of the Privy Council. After some further discussion the schoolmaster was persuaded to submit the matter to the Lord Advocate, on whom as "a discreet Person" he could rely; whereupon Stewart "again takes Mr. Kirkwood by the Hand and leads him to the Advocate, who was sitting at a very little Distance on a Bench in the Outer House." In the end his Lordship consented to act as arbiter, though the office was "sore against his Will." To the profane this episode might seem to savour of what is vulgarly known as a put-up job. Be that as it may, an arrangement was come to that the parties should meet next morning in the Advocate's chambers — the Provost, the

Treasurer and Bailie Higgins being then in town—when an effort would be made to bring about a settlement. Kirkwood's magnanimity in thus consenting to meet his adversaries half way served no purpose beyond furnishing further proof of their stupidity, for Pardovan and his fellow wiseacres declined to attend the conference or to submit to his Lordship's judgment, unless the dominie should first acknowledge it was in the Town's power to remove him at their pleasure. This, of course, he refused to do, so nothing came of "Wily Jamie's" motion.

On 19th February the great cause was again debated at the bar before Lord Philiphaugh, Commissary Dalrymple for the schoolmaster "beginning with these Words to Mr. Stewart, 'Why did you eject me out of my House? Why did you imprison me? Why did you cast all my Goods out into the open Streets?'" Stewart for the Town refused to speak to any of these points; he would deal only with the question which the Lords in their last interlocutor had sent for discussion: Whether or not it was in the Town's power to remove Mr. Kirkwood at pleasure? "'Tis in their *power*," said the Commissary, with a smile. "It is indeed," added Mr. Kirkwood, "*In eorum potentia sed non potestate*"—physically they could cast him out, but not legally. It were tedious, as he remarks, to set down here all that was said pro and con. Stewart, "being sore pinch'd with the Commissary's Arguments," admitted that the Town had no power to deprive their master of his office, yet they had power to demit him. This distinction between deprivative and demissive power was received in Court with "a short laughter," the judge observing "That it was *Petitio Principii*, a meer begging of the Question, a Quibble about Words." After hearing counsel, his Lordship intimated that he would report the cause on a later date; but the Session rising on the 28th, no report was made, "And here Matters stand 'twixt the Town and Mr. Kirkwood on the last of February 1690 as to Civil Law; but as to Club Law it is as follows."

Destined equally a victim to both systems of jurisprudence, our dominie returned to Linlithgow, where he established himself in "an hired House" until he could dispose of the wreckage of his furniture. At 9 A.M. on Saturday 1st March, as he was "sitting in his Nightgown, trimming himself," there came to him one of the Provost's minions with orders that he should immediately present himself before the Council. The schoolmaster replied that he was shaving and could not then go; the officer returned with a summons even more peremptory. "They must either let me stay here at Jericho," said Mr. Kirkwood, "till that part of my Beard which is taken off grow again like the rest, or give me Time to take off the whole. I hope they mind not to affront me as Hanun did David's Messengers." (*a*) His toilet at length completed, Mr. Kirkwood repaired to the Town-house. "Come forward, Schoolmaster!" cried the Provost in a very loud voice—("for he had gotten such a check for saying 'Sirrah' before, that he held off that"). "Schoolmaster I am," rejoined the indomitable dominie, "and ought so to be call'd, till the Lords of Session determine the contrary." Pardovan then ordered him to remove by Tuesday next the contents of his study (which, as the reader may remember, had escaped the recent raid) and to deliver the key to the Treasurer. Kirkwood pointed out that until the cause was decided against him the whole house and study were his, and that the Lords had expressly forbidden the Council to meddle further with him. "If you will not remove your Goods willingly," retorted Pardovan, "we shall do it by Force," and so the matter rested for the time.

On Tuesday following, the Treasurer, two bailies and four officers proceeded to the schoolhouse and sent one of their number to demand of Kirkwood the key, "which

(*a*) "So Hanun took David's servants, and shaved off the one half of their beards, and cut off their garments in the middle, even to their buttocks, and sent them away."—2 Samuel x. 4.

they must either get or carry him to prison." He elected for the latter alternative, and voluntarily set out for the Tolbooth. "As he is going towards it he meets another Officer with Orders to carry him to the Bailies. 'I'm going to Prison,' said Mr. Kirkwood to the Officer. 'You must not go,' said the other. 'I will go,' replied Mr. Kirkwood. 'You shall not,' said the other; and with this they began to struggle." This Gilbertian contest terminated in presence of the bailies, who said that they had given no orders for his arrest, a statement which the officer "in their sight and audience" denied. "Whether the Bailies or Officer be guilty of the Breach of the Ninth Commandment they know best themselves and let others make conjecture," is Mr. Kirkwood's comment upon this "odd Passage." A quaint instance of the dominie's pedantic humour concludes the scene. "'Tho' we will not imprison you,' said Bailie Main, 'yet you deserve it.' 'Upon what ground, Bailie?' answered Mr. Kirkwood. 'For your Pervicacy,' said the other. 'I was once your Master,' replied Mr. Kirkwood, 'and I think I must be it again; for you seem not well to understand what Pervicacy is. If all things were rightly considered it would be found you are rather Pervicacious in this Matter than I: for a Pervicacious Man is one that is so wedded to a thing that, be it right, be it wrong, he will prosecute it. But I find, Gentlemen, this is a needless Debate; and, therefore, farewel.'"

While this was adoing Pardovan, "a Sword by him," was majoring about at the Cross "in a very odd Manner." As Mr. Kirkwood went towards him to protest against this new outrage, an officer came up in great haste, saying, "By no means go nigh the Provost, for he is in a Fury." Whereupon the dominie turned aside: "the Provost, it seems, was for Bloody War, Mr. Kirkwood only for Civil; but sore does he now repent he went not up to him, tho' he should have got a broken Head." The old Adam stirred beneath the cloak of the philosopher, and indeed Pardovan's

conduct had been such as, in the memorable words of Mrs. Gamp, "lambs could not forgive, nor worms forget." Meanwhile the civic forces, led by Deacon Muckle, "broke open with Hammers and other Tools his Closet door," and cast out into the open and dirty street all his books, papers, and MSS., "being the Product of 30 Years' great Labours." The only official expression of regret came from Bailie Smith, who said that if the windows had not been "all fast with Nails," he would have had the things thrown from the third storey. Next morning Mr. Kirkwood, shaking the dust of Lithgow from his feet, went to Edinburgh and took a house, "where he might live with his poor distressed Wife and Children at some more Ease, without the Reach of these bloody Canibals." The term is a strong one, but I think it is warranted by the circumstances.

The course of our dominie's protracted litigation recalls another "ganging plea"—that of *Hutchinson* v. *Mackitchinson*, of which mine host of the Hawes boasted to the Antiquary: "It's been four times in afore the Fifteen, and deil ony thing the wisest o' them could make o't, but just to send it out again to the Outer House. Oh, it's a beautiful thing to see how lang and how carefully justice is considered in this country!" In a "General Account of the Dammage, Loss, Expence and Trouble Mr. Kirkwood has met with by this Plea, preceding April 1690," appended to his *Short Information*, the author thus surveys the field of his judicial operations: "Know that he Raised and Discust Three Suspensions, an Advocation, a Summonds of Reduction, a Declarator; Cited to Edinburgh the whole Town Council; Gave in to the Lords Seven Bills, 82 Informations; Took 31 Instruments, Extracted 7 Acts made by the Town, Got Doubles of their Bills, besides many other Papers, as Minutes, Interlocutors, etc." The cause was fourteen times debated at the bar, he attended the Court of Session for fifteen weeks, and he travelled to and from Edinburgh eighteen times upon that business.

These things, observes Mr. Kirkwood, reflecting on his late painful experiences, were not done in a corner, but openly and avowedly "in Face of the Sun"; not by an ignorant rabble, but by men in public trust, magistrates of a royal and ancient burgh, "a Company of Gods, as they call themselves," whose duty it was to protect others from cruelty and oppression. They were done, not to a stranger or foreigner, "but to their Door-Neighbour, their familiar Friend and most intimate Acquaintance, yea, to a fellow Burgess and Gild-brother," who had, moreover, deserved well of his country by publishing many useful works. They were done to one "that was altogether innocent as to what Man can lay to his Charge," who had lived fifteen years among them without the least stain on his character: and all because he refused to forsake the public worship of the Church for the service of the Provost's kitchen. For this cause alone was he branded as "a Reviler of the Gods of his People." "'Tis worth the Enquiry to know," he characteristically remarks, "the Antecedent or Substantive to the Word 'His' in this so singular a Phrase. At the reading of the Information it was pretty warmly debated by Persons of Honour whether it was God, Provost or Kirkwood: a Reviler of the Gods of God's People, or the Provost's People, or Kirkwood's people. Some were for one, some for another, some for none of them, averring it was not good Grammar considering the Context, and that instead of 'His' it should be 'The': a Reviler of the Gods of the People. Others cry'd out it was the hight of Blasphemy to call any Webster or Tailor in the Kingdom a God." Posterity, however, so far at least as I may venture to speak for it, is little likely to quarrel with that diverting phrase, which, one is happy to think, must have been wormwood to the magistrates for the term of their official life.

When in March 1690 it was known that Mr. Kirkwood had left Linlithgow, several persons of position and influence asked him to undertake the education of their children, so that he soon came to have "a very frequent School, above

Sevenscore of Noblemen and Gentlemen's sons." Nor was this the only mark he received of esteem for his talents and sympathy in his misfortunes. St. Andrews University offered him the Chair of Humanity. He was called to be Professor of Greek in the College of James Town, Virginia, and his friend the Bishop of London urged him to accept; but he feared the climate for his young family. The grammar schools of Duns, Kimbolton and Kelso contended for the benefit of his teaching. Lord Tweeddale, the Chancellor, was "very pressing" that Kelso should be the favoured one, and to its claims, further supported by Lady Roxburgh, Mr. Kirkwood eventually gave the preference. But the most surprising overture made to him proceeded from his old enemy the Provost, who commissioned a minister "to deal with Mr. Kirkwood in order to get him back again to Lithgow upon good Terms"! The recipient of this invitation "stood no less amaz'd than if it had been told him all the Rivers were running back again to their Spring from whence they came." "We read," he continues, "of very many strange Things told us by Ovid in his *Metamorphoses;* how Men, yea, Gods themselves were transformed into the Shape of Beasts: Acteon was for no very great Fault turned into a Hart, and devour'd by his own Dogs; Jupiter into a Bull, for his own carnal Ends. But those are nothing if compared to this. Here bloody and rampant Lions, wild and savage Boars, cruel and greedy Wolves and Tygers are become harmless and innocent little Lambs." Though the terms offered by the Town were "very charming," it need hardly be said that Mr. Kirkwood was unable to accept them; no transformation the Gods of Lithgow might affect could deceive that "burnt Bairn."

Hitherto Mr. Kirkwood, like Daniel in the Lions' Den, had been for the Council the centre of attraction, but on the withdrawal of that bone of contention their natural ferocity prompted them to turn upon each other, and their war-cries were heard even in the Court of Session. In

January 1691, meeting Bailie Beer one day in the Parliament Close, the dominie thus addressed him: "'What's this, Bailie, now fallen out among you? I hear of very horrid and dreadful Crimes laid to some of your Charges. You are pursuing one another to Death. I thought if once I had been removed from amongst you, you would have agreed all like Lambs, whereas you are now worse than ever.' 'If I had Time and Place convenient,' answer'd the Bailie, 'I would give you a perfect account of all things.' 'Let's step into the Old Kirk,' replied Mr. Kirkwood. 'With all my Heart,' said the Bailie." So the pair entered St. Giles Church, which then "was wont to stand open the whole Day, that People may go into it Morning and Evening to shut up their Prayers to the Almighty," and there the bailie gave him the news of the recent "Battels" in the Council. For these, though highly entertaining, I have no space. Moved by this recital of the Provost's latest "Pranks" the schoolmaster exclaimed: "'Bailie, Bailie, were it done to some of you as was done to the unjust Judge, you would but get what you deserve!' 'Pray, Mr. Kirkwood' said the Bailie, 'tell me what was done to that unjust Judge?' 'The Skin,' replied Mr. Kirkwood, 'was taken off him and affix'd to the Bench where Sentence was past, to scare others from doing the like.' At this the Bailie lifted up his Hands and Shoulders towards the very Heavens, saying, 'Good Lord deliver us! Cou'd such a thing be done to a Judge?'" And with this he sunk down to the very ground, so that Mr. Kirkwood "was truly fear'd to be alone with him." When he had sufficiently recovered, his admonisher spoke very kindly to him and gave him some sensible advice, for which the bailie professed himself grateful, and so they parted. It is to be hoped that he took the parable home with him to Linlithgow.

Not until June 1692 was Mr. Kirkwood's cause considered by the Lords of Their Majesties' Privy Council. In the course of the debate before that august tribunal

Mr. Stewart, for the Town, denied that the "treacherous" petition of which we have heard was ever presented to the Court of Session at all. Mr. Kirkwood thereupon produced from his pocket the original document, signed by Stewart himself, "at which the Lords lookt one to another"—and no wonder; "so that the Town was quite defeat and baffled, and their Advocates rendered speechless, not one of them opening his Mouth." Even "wiliness" has its occasional drawbacks. The Privy Council appointed Lord Fountainhall,(*a*) one of their number, to take evidence as to the amount of Mr. Kirkwood's claim, to which that gentleman deponed as follows:—

	lib. Scots
1mo. That he wanted of by-run Salaries preceeding Whitsunday then last, three Years, ...	800
2do. His Profits in the School two Years and a half, viz. Quarter-Wages and three Candlemass Offerings, with other Casualties, ...	1800
3tio. His House and Garden, with Consideration of his Advantage by Tablers [boarders], ...	500
4to. The Spoiling of his Goods and their Imbazling; and the Loss by the Auction, and the transporting them to Edinburgh, .	1500
5to. The Expense of Plea before the Lords of Session, . .	1200
Summa	5800

Over and above, there was "the *Pretium affectionis* of Things, which is very considerable"; as well as "his own indefatigable Pains both of Body and Mind."

Pardovan, for not compearing before the Privy Council when summoned, was "denounced Rebel and put to the Horn," and his movable goods ordered to be escheat and forfeit to Their Majesties' use, all which was duly done at the Cross of Lithgow on 11th July 1692. Though advised to "put in for Pardovan's Escheat" the dominie, "looking on it as an odious Thing," refused to benefit by his enemy's so merited misfortune. The burgh was fined 4000 merks for Mr. Kirkwood's use, and Lord Linlithgow was appointed

(*a*) Sir John Lauder of Fountainhall, the learned historian and judge.

to enquire whether the Provost and bailies only, or the whole members of council were guilty of the several riots.

One would expect that our worthy friend's trials were now over, and that at least materially he was recompensed for all his tribulations. But, alas, he says in his *History*, "to this Day, viz. 10th April 1711, he has not receiv'd the Worth of a Farthing! What he will get he knows not; however, he still lives in good Hopes." Of this amazing miscarriage of justice the dominie offers the following explanation: Lord Linlithgow died before making his report; and he himself entering at the time upon his duties at Kelso, "fell into a vast Ocean of Troubles, was tost as in a Blanket, hurried from Court to Court, from one Judicature to another, for several Years." A full account of this fresh embroilment was published by him in 1698.(*a*) Its 144 closely-printed quarto pages are devoted to the story of his plea with the Kirk and Presbytery of Kelso, from which it appears that he was even more evilly entreated by the divines of that town than he had been by the Gods of Lithgow. "Whether that Battel Mr. Kirkwood had with the Burgh or that with the Kirk was the most severe and bloody," he is at a loss to determine; but as regards mental suffering, "that with the Kirk does infinitely surpass this with the Burgh." Of the history of this new Holy War I lack time and space to treat; but if the reader be not weary of Mr. Kirkwood and his woes, at some propitious season I may have a tale to tell: how the dauntless dominie wrestled with wild beasts at Ephesus, yet was not overcome of them, and how in the end, like as the sun emerging from the morning mists, he broke through clouds of calumny into a clearer sky.

(*a*) *Mr. Kirkwood's Plea before the Kirk and Civil Judicatures of Scotland, Divided into Five Parts. . . . London, Printed by D. E. for the Author. 1698.*

THE HARD CASE OF MR. JAMES OLIPHANT

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Second Clown. But is this law?
First Clown. Ay, marry, is 't; crowner's quest law.
—*Hamlet*, Act V. Sc. 1.

DEGENERATE and disloyal Scots have been known to lament the absence from our legal usage of that palladium of English justice, the coroner's court, as tending to foster in our lieges a taste for manslaughter and to confer immunity on murderers. And while it may be allowed that there have been, north of Tweed, one or two notable cases in which a public inquest conducted by such an official immediately upon discovery of the crime perhaps might better have brought the criminal to book than our more leisurely and private method of inquiry, yet in the instances I have in mind it was not so much the system that was at fault as the functionaries responsible for its administration. Even Procurators-Fiscal are human; they make mistakes and have their weaknesses like lesser folk. But had a coroner's jury sat upon the Sandyford Place murder of 1862, the subsequent proceedings of which Mrs. M'Lachlan was the centre would probably have assumed a different aspect; a remark which, for other reasons, equally applies to a more recent mystery that might have been dispelled had prompter measures been taken to investigate it, where the venue was thought to have been chosen for the express purpose of avoiding the English procedure.

Be these matters as they may, admirers of that system must have been disagreeably surprised by the facts disclosed upon the trial in 1915 of George Joseph Smith, commonly called the Brides-in-the-bath case. This modern disciple of Bluebeard and King Henry VIII. married some

seven wives, most of whom he was content to desert after robbing them of their ready money; but his last three victims, possessing some property and making wills in his favour, were successively drowned in their baths. In each case the murderer followed the same formula, and in each case a coroner's jury after full inquiry pronounced a verdict of death from natural causes. It was objected to Sir Walter Scott that in characters of the Meg Merrilies type he was "good, but good too often"; the same may be said of Mr. Smith's novel and ingenious device for solving the chief problem involved in the successful commission of murder: the disposal of the remains. Once was well enough, twice might have passed as a coincidence, but thrice was more than the most sanguine of assassins could reasonably hope to compass. Still, for originality of design and boldness in execution these crimes would have merited the encomium of De Quincey.

I propose to give here a short account of the most flagrant abuse of the coroner's powers with which I am acquainted. The fact that the sufferer was a Scotsman "of an auld descent" has induced me, contrary to my custom, thus to venture across the Border, in the belief that the tale may go some way to reconcile malcontents with our native and familiar practice. For the facts I am indebted to a contemporary pamphlet, entitled: "The Case of Mr. James Oliphant, Surgeon, respecting a Prosecution which He, together with his Wife and Maid Servant, underwent in the Year 1764, for the suppos'd Murder of a Female Domestic. Newcastle upon Tyne: Printed for Mr. Oliphant; and sold by B. Fleming, in Newcastle; J. Johnson, in London; W. Drummond, in Edinburgh; and all other Booksellers in Great Britain, &c. MDCCLXVIII."

The victim of this scandalous miscarriage of justice was a scion of an ancient and honourable family, "a House very Loyall to the State of Scotland," the Oliphants of Gask. His father was James Oliphant, brother to the

Jacobite laird who was governor of Perth in 1746; his mother was Janet Austin of Kilspindie. In those times the younger sons of the old Jacobite and Episcopalian families, to whom all public and most professional careers were closed, commonly entered some business or trade. Thus James Oliphant *père* became a wine merchant in Perth. By 1749, as appears from a letter of his son, he had taken a house and shop in Edinburgh "to dale in the grocery way."(*a*) He had three sons, of whom the eldest, James, is to engage our attention. The lad first followed the profession of arms, and in the letter above cited he describes himself as "Cadet in Lieu. Generall Halkets Regiment in Garrison at Ypres." The elder James abandoned the grocery business in 1751; four years later he asked his brother Laurence, the laird, then in exile in Paris, to get a commission for young James in the Spanish service. Whether or not the laird did anything for his nephew does not appear, but he refused to allow his brother James, whose circumstances were straitened, an asylum at Gask.(*b*) "After passing a few of his juvenile years in the army," James tells us in his *Case*, he exchanged the sword for the scalpel, and in 1755 married Margaret, daughter of Mr. William Erskine, a surgeon in Gateshead, who had been in practice there for some forty years, during which he enjoyed a high reputation by reason of his sterling character and professional skill. He took his young son-in-law into partnership, but by the time in question the old gentleman had retired, and James Oliphant carried on the practice alone.

In the month of May 1764 the household consisted of Mr. and Mrs. Oliphant, their two children, old Mr. Erskine and two maidservants. That month one of the maids fell sick and had to leave, so a girl named Dinah Armstrong was engaged, without a "character," to take her place. It afterwards appeared that Dinah was other than a good

(*a*) *The Oliphants of Gask*, p. 163. (*b*) *Ibid.*, p. 164.

one, having been dismissed a few days before from the service of Mrs. Heath, a widow resident in Newcastle, upon suspicion of theft, a fact then unknown to her new mistress. The plausible account which the girl gave of herself, coupled with "a good countenance," was unfortunately deemed sufficient recommendation. On 5th June Mr. and Mrs. Oliphant went to Scotland on a visit to that gentleman's relations, leaving their children in the care of a friend, Mrs. Milne, wife of a merchant in Newcastle. Dinah went with the children as their nurse.

When Mrs. Oliphant came home on 10th July she was told by Mrs. Milne that the maid had been detected in certain pilferings by her, that lady having among other things missed three damask napkins, "which from circumstances she strongly suspected the said Dinah of taking." She therefore requested Mrs. Oliphant to examine the girl strictly about them. Accordingly on Friday, 13th July, Mrs. Oliphant spoke to Dinah on the subject, mentioned the missing napkins and Mrs Milne's suspicions, and begged her to be candid and declare the truth. The damsel positively denied the charge. Asked if she would allow her chest to be searched, Dinah reluctantly consented; no napkins were found there, but a linen sheet, "mark'd in such a manner as if intended to be cut into shifts," and bearing the initials A. H., was discovered. This, she said, was "a gift of a relation's," but on the sheet being identified by Mrs. Heath, her former mistress, as that lady's property, Dinah confessed that she had stolen it, together with some other trifles. On Monday, 16th July, Mrs. Oliphant presented her with certain underlinen, supposing the girl to have been tempted by the inadequacy of her wardrobe in that regard; she also gave the culprit much excellent advice, said she would keep her till her quarter had expired, promised to intercede for her with Mesdames Heath and Milne, "and only begg'd she would for her own sake restore the three napkins to the owner." But Dinah persisted that she knew nothing of them.

Mrs. Milne, who seems to have taken the rape of the napkins very hard, now intimated her intention to prosecute Dinah so soon as she left the Oliphants' service, and urged that she be dismissed forthwith. Mrs. Oliphant, unfortunately, as it proved, for all concerned, did not do so. Anxious if possible to save the girl from public disgrace and punishment, she thought that "if some person of ingenuity was to interrogate her" the peccant Dinah might be brought to confess her fault and make restitution. A neighbour, John Green, tallow chandler in Gateshead, "a gentleman of great humanity," was called in, and being acquainted with the position of matters, on the forenoon of Tuesday, 17th July, he "expostulated with the girl, representing to her the natural consequences of her conduct and of a prosecution." Dinah pleaded guilty to the sheet but continued steadfast in her denial of the napkins. He left her to think it over, saying he would return later in the day for her final answer. Meanwhile the girl went about her domestic duties as usual, brought up water from the cellar several times—the house stood beside the river—took the children to school, and fetched from the Queen's Head in Pipewellgate ale for the mid-day dinner.

In order to appreciate the evidence as to what occurred that day it is necessary to have some conception of Mr. Oliphant's abode. "The house stands at the south end of Tyne Bridge, on the first arch, and on the west side of the street. In the second or middle floor is the kitchen and parlour, whose doors are opposite each other. Next below is the shop on the ground floor, and underneath the shop is the cellar, into which the descent is by winding stairs. The cellar has a door cut into two parts; the upper part opening for the purpose of receiving air and light, the under part opening occasionally for convenience of loading or unloading goods from thence into or from the river Tyne, which at high tide runs deep and rapid almost close below." (*a*)

(*a*) *The case of Mr. James Oliphant*, pp. 5–6.

Between the hours of one and two on the afternoon of Tuesday, 17th July, the family sat down to dinner in the parlour. There were present Mr. Oliphant and his wife, old Mr. Erskine, and Mr. Henry Thompson, a resident patient under the doctor's care, who had been living with them since June. Mary Shittleton, the other servant, a respectable girl enjoying her employers' confidence, attended the table. The dishing of the dinner was done in the kitchen by Dinah, whose demeanour was then noticeably dull and sullen. Mrs. French, a staymaker, was also in the kitchen, awaiting the return of the elder child from school to try on a pair of stays. Finding the time hang heavily Mrs. French was "amusing herself at the window," and paid little attention to the movements of the sulky handmaid. Mary Shittleton, coming from the parlour "for some things which the said Dinah had been left dressing," found that she was not in the kitchen and asked Mrs. French what had become of her. The matron replied that she thought the girl had gone downstairs. Mary called down the well of the stair, and getting no answer proceeded to the shop on the ground floor; failing to find her there, she went down to the cellar in the basement. As she descended the stair she saw for an instant reflected on the east wall of the cellar the shadow of a figure in the act of leaping from the half-door into the river. The tide was out at the time, and she heard the fall of a body upon the shore beneath. Looking out, she saw Dinah Armstrong lying on the sand upon her side. She called to her several times, but receiving no reply, ran upstairs to alarm the family. (*a*) The whole household was thrown into the greatest consternation. They rushed down to the cellar, but by that time the girl had disappeared. Neighbours were summoned, the shore was examined, but though the mark made by her body was plainly visible, no further trace of Dinah could be found. "She had leap'd a height

(*a*) This is Mary Shittleton's own account of the affair, as given by her at the inquest.

of about 13 feet, and the place she fell on was distant from the then stream (it being low-water) only four or five yards." There was no sign of her in the river, and a search of the adjacent lanes and of the arches of the bridge yielded no better result. Some boys fishing below the bridge had seen nothing of her. The rest of the day was spent in making fruitless inquiries in the neighbourhood after the missing girl.

In these circumstances Mr. Oliphant naturally concluded that Dinah had meant to drown herself by jumping into the river, that her design being defeated by the lowness of the tide, she had thought better of her purpose and "escap'd undiscover'd by some of the passages leading from the water side into the town," and that shame prevented her returning to the family. That night word was sent by Mrs. Milne's maid to acquaint her sister, Jane Armstrong, who lived in Newgate Street, Newcastle, of what had happened, and asking whether she knew anything of her, to which the answer returned was in the negative. Next morning Jane appeared in person to inquire into her sister's "departure"; she informed Mrs. Oliphant that another sister, Tamar, lived at Long Benton, 3½ miles N.E. of Newcastle, and suggested that Dinah might be there. The following day, Thursday 19th, Jane called with a friend, said she had heard nothing more of Dinah, and desired delivery of her chest and clothes, which was given. As Jane "discover'd no concern" as to Dinah's disappearance, Mrs. Oliphant assumed that she had sufficient reasons of her own for not being unduly anxious: the charges of theft and the attempt at suicide might well dispose the girl's relations to conceal her whereabouts. So for the time the matter rested.

On the morning of Sunday, 22nd July, Joseph Barlow, a "keelman," called at Mr. Oliphant's house. Mary Shittleton opened the door, and he asked "if Dr. Erskine had a maid that was drowned lately." Mary replied that a maid had been missing since Tuesday, but she hoped she

was not drowned. Mr. Oliphant then coming to the door, Barlow stated that he and another man had that morning "taken up a woman floating in the middle of the river Tyne," which he had carried ashore at Dunston, 1½ miles W. of Gateshead, on the Durham side of the Tyne, "where a number of people employ'd about the coal-works live." From Barlow's description Mr. Oliphant could not be certain that the body was that of the missing girl; he therefore referred him to her sister Jane as the person most capable of deciding the question. Meanwhile for his own satisfaction he dispatched Mary Shittleton at once to Dunston; she went, saw the body, and identified it as that of her late companion. With this intelligence Mary returned home, where the news of the hapless Dinah's tragic end was received with great concern.

Such were the facts, too plain, one would think, to be misconstrued by anybody, upon which public malice and official stupidity were to base a charge of murder against three innocent persons.

The body, when taken up by Barlow and his fellow-boatman, was laid by them across the gunwale, "the head and shoulders hanging within the boat," and in this posture the head and neck, which before were much swollen though not discoloured, rapidly assumed a dark reddish aspect. "She spung'd at the mouth; and from a contusion on the back part of her head there appear'd a tittering of bloody matter" (*a*)—the corpse had been knocked about in the river for five days. She was fully dressed, her stays were laced close, and "the string of her cap quite tight about the neck, the cap hanging behind her head." (*b*) It is also in evidence that the deceased always wore around her neck a necklace or ribbon. There was noticed on the neck a circular mark, "which at first appeared whiter than the other parts of the skin, but in a short time turn'd into a light purple colour." This mark caught the attention of the

(*a*) Evidence of Barlow at the trial. (*b*) *Ibid.*

gaping idlers who gathered round the body when it was brought ashore, and the inference was drawn that the girl had been hanged. This popular belief received scientific sanction from the wisdom of "a young practiser in surgery," who, coming up at the time, expressed his confident opinion that the deceased had been strangled, of which in his judgment the mark on the neck afforded clear and indisputable proof. Wild rumours as to the supposed circumstances attending Dinah Armstrong's disappearance quickly spread abroad; and as there is always a sufficient number of charitable persons ready to take the worst possible view of their neighbours' actions, the general voice did not scruple to denounce her master and mistress as the murderers. These reports reached the Oliphant family who, though much distressed and justly indignant, were unable to do anything to confute them.

On Monday, 23rd July, Tamar Armstrong called at the house for the purpose of venting "the most scurrilous abuse and threats" against the whole family, upon whose subsequent fortunes the insensate wrath of this vituperative virgin was destined to have a fatal effect.

On Tuesday, 24th, John Robson, Esq., one of the Coroners for the County of Durham—"not the Coroner of Newcastle, whose province it was"—came to Dunston to hold an inquest, and a jury was empannelled "out of the lowest people in the place, all strongly infected by the popular prejudice." So virulent, indeed, was the contagion that, as we shall see, even the coroner himself was not immune. The court constituted, a constable was dispatched with a summons to Mary Shittleton to attend and give evidence. By this officer Mr. Oliphant sent a civil message to the coroner, tendering himself and his family as witnesses if required, but no notice was taken of his offer. Mr. John Green, whom the reader may remember as the friendly admonisher of Dinah, attended voluntarily; but though his evidence was highly pertinent to the inquiry, the coroner rejected it and refused to take his deposition,

for no better reason, as appears, than that it was favourable to the Oliphants. Mr. Oliphant was nowise anxious as to the issue, believing that a magistrate and jury, solemnly engaged in the elucidation of the truth, would discountenance all malevolent gossip. That afternoon, however, certain friends called, and strongly advised him to go personally to Dunston "to justify himself from the calumnious aspersions thrown out against him." Accordingly, accompanied by Henry Thompson, the resident patient, and by John Weatherburn, one of the neighbours called in upon discovery of the occurrence, Mr. Oliphant set forth. When he reached Dunston "he experienced all the insolence of an enraged mob, and with difficulty preserved his person from violence." Having at length obtained speech with the coroner he gave that functionary "a detail of the whole affair relative to the Deceas'd, so far as he or any of his family had any knowledge." When he had finished his statement the coroner observed: "Very well, Sir; pray, what is all this to me? You should go talk to the Jury." Mr. Oliphant found that impartial tribunal, who were then considering their verdict, "standing by a hedge in the open air, surrounded by a crowd of people who frequently intermixed with them." "It may be, Gentlemen," said he, "you have not yet chosen a Foreman; no matter, I will, with your leave, and as Mr. Coroner has referred me to you, speak to you all." He then attempted to repeat what he knew of the business, but was prevented by the interruption of the mob, of whom Tamar and Jane Armstrong were moving spirits, "busied in inflaming the populace." The gentle Tamar denounced him as "a murdering dog," and subjected him to much vile opprobrium. Finding it impossible to obtain a hearing, Mr. Oliphant returned to the coroner and requested that his deposition, with those of Thompson and Weatherburn, might formally be taken. This the coroner refused to do, saying it was not necessary. Mr. Oliphant then insisted upon knowing of what he was accused. The coroner

replied: "I. He was charg'd with confining the Deceas'd in his cellar from the Friday till the Tuesday. II. That when she leap'd out at the cellar window no measures were taken to find her. III. That when Barlow came to acquaint him with his having found a woman drown'd, he (Mr. Oliphant) threw the door in his face and bid him begone. IV. That he had not sent for him (the coroner) as was incumbent on him." Further, that the deceased's neck bore marks of strangulation. These four allegations Mr. Oliphant offered instantly to disprove by the sworn evidence of himself, his wife, Mary Shittleton, Thompson, Weatherburn and several other responsible persons, whose testimony would clearly demonstrate their utter falsity. As to the marks of strangulation, he could prove that the girl left his house alive and well; he was neither able nor obliged to account for any marks of violence appearing on her body when found. But despite all that he could urge, the coroner absolutely refused to take the evidence either of Mr. Oliphant or of his witnesses. That gentleman waited at Dunston with his friends till six o'clock, when they sent to ask whether the coroner "had any occasion for them." The reply was, that he had not; so they went home in ignorance of the jury's finding.

From the official record of the proceedings at this remarkable inquiry it appears that the depositions of the only five persons examined were to the following effect. Jane Armstrong stated that on Monday, 16th July, she visited her sister Dinah, who was "very dull and heavy, and look'd down and said nothing." Returning later in the week, Jane was told by Mrs. Oliphant that Green had been sent for to "threaten" Dinah about some missing linen, of which she denied all knowledge. Mrs. Oliphant reported Dinah as saying, "I'm going downstairs, but I won't stay." After the disappearance, Mary Shittleton told witness that Dinah had been confined all the Tuesday forenoon. Mary said that she saw her, after leaping from the window, "rise up and run." They thought she had

"got upon the jettys of the bridge," and some men were sent to look for her.

Thomasine Elwell stated that on the afternoon of the 23rd (the day after the body was found) she was in Mr. Oliphant's surgery. Mrs. Oliphant remarked "that it [the affair] was the greatest trouble that ever came to her family, and further said that she did it [her expostulation] to a good end, in hopes of reclaiming her and screening it [the theft]." Mrs. Oliphant also said that three sheets and a tablecloth were missing, and "that she had her there from the Friday before to the Tuesday till she did that wicked deed."

Mary Shittleton, examined, gave the account of her connection with the affair which I have already narrated.

Jane Greeves stated that, three weeks before, she met upon the quayside Dinah Armstrong, who said she was in Mrs. Oliphant's service and was very well. On Monday, 23rd, witness accompanied Jane Armstrong when the latter called to ask Mrs. Oliphant "what she had to lay to the charge of the said Dinah." That lady informed them of the finding of Mrs. Heath's sheet, and said that she herself had missed some linen; but Dinah had begged her not to tell her relations. Witness then went to Mrs. Milne, who said she had lost three damask napkins, "but she did not blame her, the said Dinah, for them."(*a*)

Robert Somerville, surgeon in Swalwell, stated that he was ordered by the coroner to inspect the body. "I found," said he, "as follows: she had a circular mark on her neck about half an inch in breadth, which has been made (to my judgment) by a rope, or might have been done by a ribband, necklace or the like nature, but there was no such thing found upon her neck when taken up. Her face was quite black, occasioned by a stagnation of the blood, which is a concomitant of strangling or suffocation." He observed no other appearances of violence.

(*a*) Yet the whole trouble was caused by that lady's inveteracy in the matter of the napkins.

We have not the advantage of knowing in what manner Mr. Coroner Robson summed up this evidence for the guidance of the jury. He must have been an expert in the art of brick-making without straw, for the amazing result at which that body arrived was this: "The Jurors do upon their oath find and say, that James Oliphant, Margaret Oliphant, and Mary Shittleton, with force and arms, in the cellar of the dwelling-house of the said James Oliphant at Gateshead in the county of Durham, feloniously, wilfully, and of their malice aforethought did strangle and suffocate Dinah Armstrong with a certain cord of the value of sixpence. And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said James Oliphant, Margaret Oliphant, and Mary Shittleton, her the said Dinah Armstrong, in manner and by the means aforesaid, wilfully, feloniously, and of their malice aforethought, did kill and murder." Thus, with magnificent disregard to the proved facts, in the words of Hamlet's clown, "The crowner hath sat on her, and finds it Christian burial."

In his comments on these strange doings Mr. Oliphant justly points out that the evidence of the first four witnesses contains nothing against either him or his family. The verdict, therefore, must have proceeded solely upon the evidence of the surgeon. That expert allowed that the mark on the neck might have been caused by a ribbon or necklace, but said that nothing of the kind was found upon her. Had the coroner's zeal for truth prompted him to examine Barlow and Southeron, the men who discovered the body, they could have told him, as they afterwards did another jury, "that the Deceas'd when found had a handkerchief about her neck, and a cap tied under her chin with tape or a small string."(*a*) We know, too, from Mary Shittleton that Dinah habitually wore a ribbon round her throat. As for the discoloration of the face being "a concomitant of strangling," Mr. Oliphant, himself a surgeon,

(*a*) Evidence of Barlow and Southeron at the trial.

remarks that the body had been in the water for five days, that the stays were laced tight, and that an accidental ligature was about the neck—facts amply sufficient to account for such post-mortem appearances. Further, it was proved that lividity occurred only after the body was laid across the boat with the head hanging downwards, and after being for some time exposed to the open air. Mr. Somerville found no other marks of violence, yet Barlow afterwards swore to an injury upon the back of the head—"a bloody matter tittering out like froth."(*a*) Some of the jury later declared that their intention had been merely to find a verdict of murder, and not against any particular person.(*b*) But the coroner had no use for such fine distinctions.

The position of Mr. Oliphant and his wife was grossly prejudiced by the involving of Mary Shittleton in the charge, for thus the lips of their most important witness were sealed and they themselves deprived of the inestimable benefit of her testimony. No motive was suggested for the alleged crime, no provocation given by the deceased, no malice or sudden passion shown by the accused. That the members of a reputable family should voluntarily combine to destroy a poor servant girl for no conceivable reason and by so unlikely a means as strangling, is, even allowing for the eccentricities of human conduct, sufficiently improbable to call for the clearest proof.

Early next morning John Crozier the constable, with two concurrents, came to Mr. Oliphant's house with a warrant by the coroner for the arrest of the accused. The three prisoners were conveyed to Durham, and as a preliminary to being lodged in gaol were, at Mr. Oliphant's request, taken before the coroner in the Bishop's Palace, where that remarkable official resided, "he being household steward to his Lordship." "What brings you before me?" asked the coroner haughtily, "Do you know your case is not bailable?" To which Mr. Oliphant replied, "We come

(*a*) Evidence of Barlow at the trial.
(*b*) Affidavits of Weatherburn and Green.

here in the light of murderers, in consequence of your proceedings and warrant, and we know that our case, as you have made it, is not bailable; but I desire that bail may be taken for my wife." He then tendered the evidence of Dr. Wilson of Newcastle, who was present, prepared to certify as to the state of that lady's health and the grave consequences likely to result from her confinement in gaol. Some other friends of the prisoner thereupon offered to enter into recognizances for any amount that might be required, but the incorruptible magistrate repeated that he could accept no bail and would commit all the accused to prison. Mr. Oliphant said he was not surprised, after the treatment he had already experienced. "You are warm, Sir," retorted the coroner. "I have great reason to be so," rejoined the prisoner; "the misfortunes I now experience and foresee, in consequence of your behaviour as a magistrate, are of the most serious nature and of the most afflicting kind, and such, if I may be allowed to judge, as you can never sufficiently repair. My peace, character and fortune are not only materially affected, but likewise my liberty and life; and what is still more the life of my wife, whose tender frame and constitution render her very unfit to sustain the shocks she hath already felt and those that are likely to follow." This dignified rebuke had some effect upon the coroner, who, apparently thinking that his zeal might be carrying him too far, finally allowed the prisoners to go home, there to remain in charge of a constable until their trial at the forthcoming assizes.

Their situation was, in Mr. Oliphant's forcible phrase, "replete with horror." To the mental agony caused by the monstrous accusation under which they lay were joined "the sudden stop put to his practice, particularly from the country," the grievous injury done to his wife's health, and what was to prove the fatal effect upon his father-in-law, then "labouring under the complicated pangs of bodily distress and anguish of mind." In these manifold

misfortunes Mr. Oliphant was sustained as well by the sympathy and support of his personal friends, as by the confident hope that his innocence would soon be clearly manifested to the world.

The Durham Assizes, presided over by the Hon. Mr. Justice Bathurst,(*a*) opened on 13th August 1764, and the prisoners were now in gaol awaiting their deliverance. The fourth day of the assizes came, and yet no bill of indictment was laid before the grand jury. Mr. Oliphant's witnesses, who had been in attendance since the opening of the court, were thus put to much inconvenience. This delay was, he says, due to the action of the coroner, who, having constituted himself "sollicitor in the prosecution," was busy beating up evidence against the prisoners; "he had gone a-hunting into the country after witnesses other than those who were examined on the inquest." The gross impropriety of these proceedings well warrants Mr. Oliphant's strictures upon them. Not till the 17th, the last day of the sittings, was the bill of indictment presented to the grand jury, who found it to be a true bill; and in the afternoon of the same day the trial of the prisoners began. Judging by the bag, the coroner must have had but poor sport in the country, for the quality of the birds was no better than those which he had brought down at Dunston.

The first witness, John Southeron, who had helped to land the body, narrated the facts with which we are now familiar. When taken into the boat on the Sunday, "blood came out of her nose and mouth; her face and neck were black, with a circular white mark, half an inch broad, like the mark of a cord or of something tied round her neck tight." He did not see the body stripped. On the Tuesday the face and neck were blacker. He was one

(*a*) Henry Bathurst (1714–1794), Solicitor-General to the Prince of Wales, 1745; led for the Crown in the prosecution of Mary Blandy, 1752; Judge of the Court of Common Pleas, 1754; Lord Chancellor, 1771; succeeded his father as Earl Bathurst, 1775; and in the following year presided as Lord High Steward at the trial of the Duchess of Kingston. He resigned the Seal in 1778.

of the jury on the inquest that day. Next Joseph Barlow, his partner, told the same tale. When he announced to Mary Shittleton the finding of the body "the maid seemed no way surprized." The deceased's cap was hanging behind her head, tied under her chin with a tape or a small string. Robert Somerville, surgeon, repeated the evidence he gave at the inquest. Had the deceased been hanged on Tuesday and lain in the water till Sunday he did not think any blood could have come from the body. It might have so swelled in the water that any ligature on the neck would occasion the mark; "the necklace or ribbon might have broke." Jane Armstrong repeated, with unimportant variations, her former evidence. After the examination of three new witnesses, who had seen the body but had nothing material to say, Sarah Ward stated that on Sunday, 22nd July, she met Mary Shittleton on her way to Dunston to view the body. To her Mary gave the same account of what had happened as she did at the inquest, but added that if she should find the body to be Dinah's "she was to turn about her foot and make no discovery." Jane Greeves and Thomasine Elwell, examined, had nothing to add to their previous testimony. Tamar Armstrong described her visit to Mrs. Oliphant and the account given to her by that lady of Dinah's disappearance. The facts, when stated on oath, did not justify Tamar's extrajudicial gloss upon them. This closed the Crown case.

The defence called two witnesses only. Henry Thompson stated that he had lived as a patient in the doctor's house since June. All Tuesday forenoon, 17th July, he saw Dinah going about her ordinary work, and several times she went out of doors. She was under no restraint or confinement whatever. He then described the alarm when the family were at dinner, and the measures taken to find the missing girl. She was always kindly treated by the family, he never saw the least ill usage. Margaret French stated how she came to be in the kitchen that day; Dinah was at full liberty, going about

her business as usual. She seemed very dull. Witness gave the same account as Mary Shittleton of what afterwards happened. No further record of the proceedings is available, Mr. Oliphant here concluding his report by stating that "the prisoners were immediately acquitted to the entire satisfaction of the whole court."

Upon the prisoners' acquittal Mr. Oliphant asked leave to address the Court. He hoped that the law provided some means of redress for the enormous injuries, losses and expense he had sustained by that prosecution, and also for the punishment of the coroner, who had led him into those fatal proceedings by refusing to hear evidence on the inquest and by other misbehaviour. Mr. Justice Bathurst replied that these matters were not then regularly before the Court, but he suggested that Mr. Oliphant should take opinion of counsel as to his proper remedy. "I am sorry for your misfortune," continued his Lordship, "and believe you to be as innocent of the crime laid to your charge as myself." The Court then rose.

Shortly after his release Mr. Oliphant addressed to the Lord Bishop of Durham a letter calling his attention to the conduct of his steward in the capacity of coroner, and submitting that that person "ought to render what reparation lay in his power for the injuries sustained from his abuse of office." His Lordship took no notice of this appeal, and the unjust steward was not called to account. Mr. Oliphant next consulted several eminent lawyers as to the best means of bringing his oppressor to book. The learned gentlemen advised application to the Court of King's Bench for an information against the coroner, upon affidavits verifying the facts, which were prepared accordingly. In these, Mr. Oliphant, after dealing fully with the whole circumstances, stated that the expenses of the defence amounted to over £90; that his practice had severely suffered — "a great many people having since refused or declined to employ or have any dealings with this deponent"; and that his wife was ill of a nervous

fever, owing to the anxiety and trouble of mind she had undergone. John Weatherburn and John Green swore to the rejection by the coroner of evidence amply sufficient to rebut the charge, and that to their knowledge the jury were influenced or intimidated by him. Crozier the constable corroborated the evidence of the others as to way in which the inquest was conducted. Thomasine Elwell denied that Mrs. Oliphant had ever said she had confined Dinah in the cellar; if anything appeared in her deposition to that effect, it was a misrepresentation of the truth and contrary to her meaning.

In September 1764 Mr. Oliphant gave notice to the coroner of his intention to exhibit a complaint against him to the Court of King's Bench, and in Michaelmas Term following counsel moved upon the affidavits for an information. The Court refused the motion and referred Mr. Oliphant to the Grand Jury, "as the subject matter of the complaint appear'd to be more proper by way of indictment in the county." From this course, however, and from the alternative one of a special action for damages, which his legal advisers deemed "very proper and eligible," Mr. Oliphant was finally dissuaded, the sole certain result for him of such proceedings being further expense. "A considerable part of my small fortune," he writes, "the fruits of years of honest industry, the provision of a numerous rising family, dissipated in a necessary defence and ineffectual endeavours to obtain redress: my business greatly reduced; my reputation sullied; my peace of mind deeply wounded; my wife's health much impaired; and to complete my afflictions, deprived of the kindest and best of fathers, who after languishing a few months in all the bitterness of sorrow, fell a victim to his too great sensibility of the injuries of his son: these are some of the triumphs of my persecutors, a few of the long train of evils that have resulted from this most oppressive prosecution, the effects whereof I must severely feel to the last moment of my life." (*a*)

(*a*) *The Case of Mr. James Oliphant*, pp. v–vi.

After three years' further struggle with misfortune Mr. Oliphant, in the "ruinous" state of his affairs, was moved to appeal to an impartial world, and "with an unreserved confidence in the justice of the public," to print and publish in 1768 a full statement of his wrongs. One hopes that it met with a large sale and was the means of engaging in behalf of its unhappy author the practical sympathy of his countrymen. Mr. Oliphant notes in his introduction the remarkable parallel between his case and the contemporaneous one of Jean Calas (1761–1765), that historic instance of judicial error which in its day made as much noise as *L'Affaire Dreyfus*. "The misfortunes of the parties in both cases," he writes, "took their rise from one of the family's committing an act of suicide. In our case the accident happen'd while the family was sitting quietly at dinner; in their's, whilst at supper. With each a stranger friend was present, and both families equally unsuspicious and ignorant of what was passing. The father and relations of the son, the master and mistress of the servant — persons whom of all others in the eye of cool reason ought not to have been suspected—were the first persons positively charg'd with the murder of the deceas'd parties. A servant maid in each family was by the officers of justice made a party in the alledg'd crime, and the accus'd thereby depriv'd of the benefit of their respective evidence. The uncharitable and false reports of an infatuated multitude, notwithstanding their absurdity, gave rise in both cases to suspicion and afterwards to the prosecution of the parties. The groundless opinion of a surgeon in each case serv'd to corroborate the ridiculous notions of the populace, and gain credit to the fantasies of prejudice and delusion. The *Capitoul* of Tholouse [Magistrate of Toulouse] appears to have been much akin both in office and complexion to our Coroner. The proceedings and errours of these officers proved ruinous to the respective parties. Fortunately for our fellow-subjects they were tried before judges of different understandings from the

judges at Tholouse, otherwise the catastrophy might have been equally fatal, and the one case made a complete counterpart of the other." (*a*)

Jean Calas was a respectable draper of Toulouse. He, his wife, and two of his sons, Marc-Antoine and Pierre, were Protestants; his servant, Jeanne Viguier, was a Catholic. On the evening of 13th October 1761 the family supped together, a youth named François Lavaysse being of the party. After supper Marc-Antoine, a gloomy and profligate young Calvinist, embittered by the failure, on religious grounds, of his ambition to become an *avocat*, and disgusted with the mercantile pursuit which he was compelled to follow, went out, like Judas, and hanged himself. Unfortunately for their fate, when the others discovered his body hanging behind the door in the paternal shop, they cut it down, and for the protection of the family honour agreed to conceal the fact of the suicide. A doctor was summoned, who declared that death was due to strangling. As Protestants in a city violently Catholic the Calas were unpopular with the faithful of the neighbourhood; a rumour arose that these heretics had slain their son in order to prevent him from turning Catholic. This view was vehemently espoused by the *capitoul* charged with the investigation, one David de Beaudrigue, in whom Mr. Oliphant descries a strong resemblance to Mr. Coroner Robson. This magistrate's conduct of the case, however, was even more prejudiced and illegal. The five persons in the house were arrested, loaded with chains, and charged with murdering Marc-Antoine in the interest of Protestant fanaticism. They then told the truth about the matter, but it availed them nothing. Marc-Antoine was buried with high solemnity; the Church treated him as a martyr, the faithful considered him a saint, miracles were wrought at his tomb. "The author of this account," writes George Borrow in his report of the affair, "has an attested case of a young man

(*a*) *The Case of Mr. James Oliphant*, pp. ix–x.

who lost the use of his understanding by remaining all night in prayer on the tomb of this new saint, and not obtaining any of the miracles which he implored."(*a*) One conceives the young man's understanding as from the first not of the strongest. Meanwhile the *capitoul*, in the absence of all proof of guilt, ordered that the most rigorous torture should be applied to the three Calas, and that the friend and the servant should be "presented to torture" with a view, as appears, to the quickening of their imagination. Though despite this atrocious treatment they all persistently maintained their innocence, the Toulouse Parliament sentenced Jean Calas to death, and after undergoing torture ordinary and extraordinary, he was finally, on 10th March 1762, broken alive upon the wheel. Pierre was banished for life, the charge against Madame Calas and young Lavaysse was found not proven, and the maid, as a good Catholic, was acquitted. The vindication of this hapless family was ultimately effected by the unremitting efforts of Voltaire, who played in *L'Affaire Calas* the part later taken by Zola in *L'Affaire Dreyfus*. Two years after the judicial murder of Calas the King's Privy Council annulled the decision of the Toulouse Parliament; and on 9th March 1765, the third anniversary of Jean Calas' condemnation, his family, friend and servant were upon a new trial formally "rehabilitated," and their names erased from the criminal registers of France. It is satisfactory to learn that the *capitoul* de Beaudrigue, being dismissed from office, became insane and committed suicide, and that Louis the Fifteenth gave the survivors a grant of 30,000 francs. In these respects, as Mr. Oliphant points out, the parallel is incomplete; the English coroner went unpunished and George the Third did nothing to indemnify the victims of his stupidity and spite. But then, on the other hand, the case of Calas was even a harder one than Mr. Oliphant's.

(*a*) *Celebrated Trials*, 1825, iv. 456.

THE HANGING OF JAMES M'KEAN:

LORD BRAXFIELD'S LAST CASE

THE HANGING OF JAMES M'KEAN:

LORD BRAXFIELD'S LAST CASE.

"You're a young gentleman that doesna approve of Caapital Punishment," said Hermiston. "Weel, I'm an auld man that does."

—*Weir of Hermiston.*

UNLIKE the royal pair in Old Testament story whose fate King David so touchingly laments, the subject of this insignificant biography was neither lovely nor pleasant in his life, and in his death he was divided—by the knife of a professor of anatomy. The crime for which he thus so suitably suffered lacks those elements, whether of romance or mystery, which sometimes lend a factitious attraction to the ugliest of deeds, and the criminal himself was as canting and cruel a scoundrel as ever occupied a rope. But on the other hand, there are in his case certain circumstances that move me to evoke for a world comfortably ignorant of his existence, his evil and repulsive image. It was his good fortune to be the last man hanged by Lord Braxfield. The dramatic quality of his capture in the delectable Isle of Arran, while attempting to shun the embraces of "the widow with the wooden legs"; the curious narrative of his career, afterwards published "as taken from his own mouth" in Glasgow Tolbooth, five days before his execution; the interest which the crime aroused in the mind of Sir Walter Scott, who, as we shall see, was present at the trial and actually interviewed the murderer; the sinister and striking picture by John Kay of the prisoner as he appeared at the bar—these are for me matters sufficiently inviting, and will, I trust, by the reader be held to extenuate the act.

When Robert Louis Stevenson was busy fashioning from the dry bones of the historic Braxfield the grandly

vital figure of his own Justice-Clerk, he wrote on 1st December 1892 to his friend Mr. Charles Baxter: "I wish Pitcairn's 'Criminal Trials' *quam primum.* Also, an absolutely correct text of the Scots judiciary oath. Also, in case Pitcairn does not come down late enough, I wish as full a report as possible of a Scotch murder trial between 1790–1820. Understand, *the fullest possible.*"(*a*) Pitcairn, duly despatched to the Pacific, was read "from end to end with vast improvement"; but, alas! he did *not* come down late enough, his invaluable collection terminating with the reign of our sixth James, and I have often wondered what printed report, if any, Mr. Baxter sent out to Vailima. It would preferably be one of a trial at which Lord Braxfield himself presided, but reports of these are few. By far the best and most instructive, that of Deacon Brodie in 1788, is not a murder case; that of Major Kinloch in 1795 is only technically such, the accused having been insane when he committed the fatal act. Nor could the present case, even had a report of it been available, have claimed the high distinction of subserving the author's use, as that of James Stewart of the Glen had earlier so admirably done in the matter of David Balfour's experiences. It dealt, indeed, with murder, it occurred in 1796, and it was the last, so far as I am aware, which was tried by Lord Braxfield before that mighty frame began to crumble beneath the onslaughts of disease. No separate report was published, and beyond the official record in the Books of Adjournal we have but the accounts given in the contemporary local press. (*b*) Further, there was no defence, the pannel judicially confessing his guilt; and the Crown led evidence only "in order to satisfy the Court and the country," and to warrant the jury's verdict.

It is idle though pleasant to speculate upon how Stevenson proposed to turn the "kittle" legal corner in

(*a*) *Letters to His Family and Friends*, ii. 273–274.

(*b*) *Edinburgh Evening Courant* and *Caledonian Mercury*, 15th December 1796; *Scots Magazine*, vol. 58, p. 863.

the plot of his half-told tale. Trial scenes in fiction have rarely been successful; even the supreme example, that of Effie Deans, shows here and there some traces of the limelight. From the letter to Mr. Baxter before cited it is plain that despite the scantness of his professional equipment the writer well knew that Lord Hermiston could not himself preside at Archie Weir's trial. "The Justice-Clerk tries some people capitally on circuit," he continues. "Certain evidence cropping up, the charge is transferred to the J.-C.'s own son. *Of course, in the next trial the J.-C. is excluded*, (*a*) and the case is called before the Lord Justice-General. Where would the trial have to be? I fear in Edinburgh, which would not suit my view. Could it be again at the circuit town?" As Sir Sidney Colvin has told us, the point was submitted to Mr. Graham Murray, now Lord Dunedin, who was of opinion that the second trial might take place at the circuit town before two Lords of Justiciary, and that the Justice-General, who was then a layman and but nominally the head of the Court, would have nothing to do with it. Whereupon Stevenson wrote, "Graham Murray's note *re* the venue was highly satisfactory, and did me all the good in the world." The precedent of Argyll presiding at the Appin murder trial in 1752 would seem to have been disregarded. Personally I think that the "people" who were to be tried first by Lord Hermiston for the murder of Frank Innes at the Weaver's Stone, were the Four Black Brothers of the Cauldstaneslap; that their acquittal following upon new evidence pointing to Archie's guilt, the Justice-Clerk granted a warrant for his son's arrest, and in doing so pronounced his own doom; and that the next trial, at which Archie would be convicted, was held before Lords Glenalmond and Glenkindie. That Archie should be confined in the local county jail was

(*a*) At a late dramatic production in Edinburgh of *Weir of Hermiston* the trial scene, in which the father condemns his son to death, proved curiously unreal and ineffective, and spoilt a performance in other respects commendable.

essential to his successful rescue by the Four Black Brothers, who—as their creator divulged in a letter to Sir James Barrie—were to "break prison" in his behalf. The Tolbooth of Edinburgh had been broken once for all by Scott. Stevenson was too fine an artist to renew the attack, though he might try a crack at Portanferry; hence his relief on counsel's favourable opinion. All this, however, is beside the present purpose, and like Lord Hermiston "I must get to my plew-stilts."

Autobiography, even under conditions the most fortunate, is a difficult art. It must choose between showing the author as he really is, or as he believes himself to be, or as he would fain hope that he appears to others. At best, as I say, a ticklish business; but pursued by one in the invidious situation of a convicted murderer and executed —appropriate term!—in the condemned cell, beneath the very shadow of the scaffold, an enterprise from which the stoutest and most foolhardy might recoil. Yet did David Haggart of adventurous memory, to whom I have elsewhere paid a modest tribute, produce in circumstances thus forbidding a work now regarded by all but namby-pamby criticism as a classic of its kind. Through his brave young pages blows much the same highway breeze as that which keeps green and gracious the inimitable *Beggar's Opera*. The writer with whom we have to deal, however, though so greatly older and more experienced than his criminous successor, and in all respects the riper rascal, has nothing of his junior's charm. A cold-blooded hypocrite, certainly guilty of one, and probably of two more murders, he interests in another way. A glance at their respective portraits—David's drawn by himself in his cell, M'Kean's by Kay at the trial—shows how little, even of wickedness, they have in common. The one was, regrettably, a rogue; the other, merely an unmitigated ruffian.

"The Life of James M'Kaen, (*a*) Shoemaker in Glasgow,

(*a*) So spelt by the owner and his publishers. I have preferred throughout the more usual form.

who was executed at the Cross of Glasgow on Wednesday the 25th Jan. 1797, for the Murder and Robbery of James Buchanan, the Lanark Carrier," a little book of seventy-one pages, issued in Glasgow by Brash and Reid, is the sole account we have of its author's history. Designed for edification, it was dictated by him in Glasgow Tolbooth and published at his own request, as a "full, accurate and authentic" memoir. While in Edinburgh Tolbooth, being "continually tormented by the turnkey and others to write a *History of My Life*," he had agreed to be "interviewed," but so little was he satisfied with the result that he petitioned the Magistrates to prevent publication of the Edinburgh document, he having been "in a perfect phrenzy or delirium when it was taken down." Possibly his Glasgow publishers were the parties most interested. Anyhow, the Edinburgh "Life" was suppressed and Brash and Reid's volume had the field to itself.

James M'Kean, who at the time of his trial was aged forty-four, was born in the Gallowgate of Glasgow. His father died when he was a child, his mother married again, and on her second widowhood espoused, with unfortunate results, a journeyman shoemaker. This gentleman, whom she set up in business as a master craftsman, having abused her generosity for a season, subsequently "ran off to Dalkeith, carrying with him all the effects he could come at." James, then ten years old, was bound apprentice to a shoemaker. The deserted lady had still invested for the boy's education a small sum of money which the fugitive had overlooked. He therefore wrote professing penitence, prevailed upon her to join him in Dalkeith, and there tried to persuade her to "lift up" the fund and apply it to his own use. Finding her maternal instinct stronger than her sense of wifely duty he again absconded, this time for good and all. Bereft of the benefit of his stepfather's counsel and guidance the young M'Kean continued his apprenticeship until, his master failing in business, his indenture was transferred to a shoemaker in

Dalkeith. Before the expiry of his time, however, he ran away from home, taking with him, presumably for remembrance, "some few articles and one shilling," the property of his mother, from which it would seem that his stepfather's example had not been wholly thrown away. M'Kean made his way to Lanark, where he remained two years working at his trade. His mother meanwhile had prospered, having then a considerable business in selling smallwares, so the absentee thought it worth his while to go home and was welcomed after the usual fashion of returned prodigals. To his mother's folly in fitting him out "genteelly as to apparel" and allowing him too much liberty and pocket-money he attributes the taste for loose company which ultimately led to his undoing.

M'Kean courted for some time "a sober young girl of the neighbourhood," to whom he made oath that nothing but death should part them. Wearying of her charms, he determined to break with her; so he took her one day by a lane where lay a dead horse, and as she stood looking at it he went to the other side of the body, pointing out "that his vow was now entirely broken, for death had made a total separation between them." The quaintness of this conceit was so little appreciated by the damsel that "she fell into a fever which nearly deprived her of life." His mother now wanted him to marry a certain dame "for the sake of a trifling sum of which she was possessed," but whether he deemed the consideration inadequate or was too high minded to marry for money, he secretly contracted an alliance with another. "A short time after I was married," he says, "I fell into a criminal correspondence with a girl who soon after proved with child to me, in consequence of which she was deprived of her place of service, and went home to her father's in the parish of Liberton, about three miles from Dalkeith; and I was put away from my mother's house and was under the necessity of taking private lodgings." His wife remained with her own people. After the birth of the

child, M'Kean awoke one morning to find that someone had deposited the infant in his bed while he slept. He returned the unwelcome guest to Liberton, but it was again brought back to him. Finally his mother undertook the care of it, M'Kean "made public satisfaction" in the parish kirk of Liberton, compensated the girl's parents for their charges, and settled down to domesticity with a mind at ease.

The pleasures of home life must have soon begun to pall, for presently we find him sallying forth with a friend, James Pringle, an Edinburgh writer, "for a country walk and to avoid company." They forgathered with one John Bell, who was on his way to Musselburgh to enlist under Major Menzies in Frazer's Highlanders, "which were then raising during the time of the American War." It was arranged that the friends should accompany the recruit in order to participate in the reward. "He received six guineas of bounty and we received half a guinea betwixt us for our bringing him." The sergeant marked the occasion by treating them to sundry bowls of punch, and at a favourable stage of the entertainment "threw down all the cash he had upon the table," inviting them to help themselves and go along with him. "Meantime the landlord coming to serve us, used a great many imprecations, swearing that we were all of us the King's men. At this I took up a candlestick and threw it at him with such violence that it cut him through the cheek bone; then all the recruits and the sergeant got up at once to seize us, and the table, candle, money and all were thrown to the ground. In the confusion John Bell, the recruit whom we had brought, gathered all the money he could from off the floor and ran off and deserted, and was never more heard of, though repeatedly advertised" (*a*). M'Kean and his learned friend were less fortunate. Arrested by the

(*a*) In a footnote to this passage the author frankly admits that his temper was rarely in perfect control, and cites King Solomon on the unwisdom of yielding to that infirmity.

soldiers and taken to the commanding officer's quarters they found that he had just gone to bed; his servant would not disturb him, and said they must be kept prisoners till next day. This so enraged the man of law that he, being of powerful build, knocked down several of the party and rescued his companion, who in the scuffle received a bayonet thrust in the thigh. Pringle, who seems to have been anything but a dry-as-dust disciple of Themis, was so elated at their escape that he lifted an ale barrel from the door of a place of public refreshment, and pushed it through the window. "The people were so much alarmed that they came out of the house and ran after us naked, excepting with their shirts, but they did not overtake us." The pair reached Dalkeith safely, but next day a military guard arrived and took them prisoner. Pringle was carried off to Edinburgh, but M'Kean's mother obtained his freedom from the sergeant at the expense of two guineas. How the festive writer fared is not recorded.

After this escapade M'Kean settled down of new, "behaving unblameably as to the world's censure." So he continued, until the mysterious disappearance of his child set local tongues wagging again. According to his own account his mother, to remove the scandal of the child's existence, "put it into an hospital at Edinburgh." What became of it he is unable to state; the child, like Mr. John Bell of Musselburgh, was never heard of more. The incident was the subject of unkindly comment, and so sensitive was M'Kean to criticism that "in order to escape the reproach" he removed with his wife to Glasgow, taking with him "sufficient testimonials of his moral character" from the minister of his parish. These documents, if genuine, afford singular evidence of the charity of that complacent divine. M'Kean found employment with a firm of shoemakers, until seven years later he set up in business for himself. He then invited his mother to come and share his home in Glasgow; this the old lady did in 1785, and they lived together, he says, in perfect amity

for four months. It afterwards appeared, however, that the harmony of the household suffered somewhat from the uncertain temper of the master, who, among other regrettable outbursts, is reported to have boiled in a pot his mother's favourite cat. But he was soon to lie under an imputation yet more grievous.

At eight o'clock, on the evening of 25th September 1785, a man unknown decoyed old Mrs. M'Kean from her home in the High Street; she never returned, and next day her dead body was found "in the Grand Canal, about half a mile beyond the Old Basin at Hamilton Hill." M'Kean's account of this untoward family incident is as follows. He was working in the house all that day until about 8 P.M., "when, coming out of the door, I was about three steps down my own stair when a person asked at me in an ordinary tone of voice, 'if it was here or where Mary Hogg lived?' this being my mother's maiden name. To this question I made no reply, but turning about I pushed up the door of her apartment and called to her, 'Mother, here is a man wanting you,' or some such words as these. She accordingly came to the door, for I saw her do so; I passed the man in the stair but paid no attention to him, and stood for a little time to make water in the close. I overheard the man speaking to my mother and her to him on the stair, but recollect nothing of what he or she said, nor yet do I recollect of their passing me in the close." The perfunctory and inadequate character of this explanation is most remarkable. The old mother, a stranger in the city, summoned suddenly after dark by an unknown man, and the son neither asks his business nor notes his appearance, and though within earshot of their conversation, fails to recall its purport! It is also very singular that, although the old woman had been thrice married, the stranger should know, and enquire for her by, her maiden name. M'Kean then went out, he says, upon his own affairs for an hour and came home, making no comment on his mother's continued absence. "I caused my wife to

serve up supper to me and send out for a bottle of porter; all this was done by nine o'clock or a few minutes after nine; and then as our usual course was, we made ready to make family worship, which was done accordingly." On the conclusion of these devotional exercises Jean M'Kerran, a friend of the old lady, called to see her. Learning that she was abroad, Jean decided to await her return. Eleven o'clock struck, and still there was no word of her; M'Kean's filial solicitude was aroused, he and the visitor went out together to look for her. They tried sundry carriers' quarters and taverns "where she used to frequent," but without result. By midnight the son's anxiety was increased; he, Miss M'Kerran, and a friendly tobacconist who lived in the close, resumed the search, which they continued till the following noon.

At midday, returning from the ineffectual quest, Jean heard casually in the Gallowgate that the missing woman was found drowned in the Canal; so the bereaved son went to the Canal Basin, brought to his own house the body of his mother, and, as he points out, "gave her a decent funeral." What more could the best of sons have done? And yet so wicked is the world that, as he complains, presently among the ignorant and the ill-willing a report spread that he was his mother's murderer. "This rumour," he says, "was principally caused by a girl who went messages for the girls in the inkle factory (*a*) of Messrs. David Dale & Co. *as she was in the room with my mother when I unfortunately called her out.*" We may so far agree with our author that but for the fact stated in the passage I have italicised, we should have heard nothing of his connection with the tragedy. No official enquiry into the case appears to have been made; but after the funeral M'Kean, at the instance of some friends, caused to be inserted in the Glasgow newspapers the following advertisement, paying 4s. 3d. for each insertion:—

(*a*) INKLE.—A narrow linen fabric or kind of tape, formerly used for shoe-ties, apron-strings, and the like.—Wright's *English Dialect Dictionary.*

A REWARD OF TWENTY GUINEAS.

Whereas Mary Hogg, relict of the deceased James M'Kaen, tanner in Glasgow, who for some time past has been employed in selling teas, was called from her house in Castle-pens Land, in the High Street of Glasgow, about seven of the clock on the evening of Monday the 26th of September last, to speak with a person at the close-mouth; and the said Mary Hogg having been found dead next morning in the Great Canal, near Ruchhill, there is ground to suspect that her death has been occasioned by some person who had her at malice; a reward is therefore offered of 20 guineas to any person who can give information of the person who took her from her house; or of the person who was accessory to or concerned in her death, to be paid on conviction by her son

JAMES M'KAEN, Shoemaker in Glasgow.(*a*)

No such information was ever forthcoming, and M'Kean regrets to state that his mother's death remained a mystery —"this is all that I know respecting that unfortunate affair."

He devotes much more energy and space to dealing with another calumny of which he was the victim. His niece was married to one Watson, a butcher in Lanark. This gentleman's affairs becoming involved, "he made an elopement from her." The deserted spouse applied to her uncle for advice; M'Kean went to Lanark and obtained from her "the rights of a *land* of houses and a piece of ground," in security of an account of £14 for boots and shoes supplied by him to her absent lord. The butcher seems to have been somewhat nice in the matter of footwear; but even so, the amount of the security appears excessive. This friendly move caused trouble with the other creditors, who were further annoyed when they found that Mrs. Watson had sent to her uncle by James Buchanan, the Lanark carrier, a sack of valuables, "to prevent them being taken from her." The goods were arrested in the hands of Buchanan, who refused to deliver them to M'Kean; "several sharp words passed," and it may be that the offence thus given to the intemperate shoemaker contributed to the carrier's death. The lady seems to have shared her uncle's infirmity

(*a*) *Glasgow Journal*, 6th October 1785.

of temper, for so highly was she incensed by the action of the creditors that she "threatened to burn their house about their ears," for which she was apprehended on a warrant, "but the deceased James Buchanan bailed her out of prison." Subsequently she resided with her uncle, until, upon his "discovering some instances of improper behaviour in her," he advised her to seek a less respectable asylum.

Now it was part of Buchanan's business to convey weekly from the Merchant Banking Company of Glasgow to a manufacturer in Lanark certain sums of money. M'Kean says nothing about this, but it is plain that he became aware of the fact and began to cultivate the carrier's acquaintance. The landlord of the inn at which, when in Glasgow, Buchanan used to put up deponed at the trial that he had seen the pannel and the carrier in company every Thursday for three or four weeks previous to the murder. M'Kean admits that Buchanan spent an evening at his house the week before the crime: "I lighted him downstairs, and at parting asked him to give me a call next week." The carrier probably owed his escape on this occasion to his not then having the Bank's money upon him. On the evening of the following Friday, 7th October 1796, Buchanan came again by invitation to the dark house in Castle-pens Land, and was received in the back room by his host, who says he was writing a letter which, along with a parcel, he intended sending by the carrier. As it chanced, he was mending his pen with "a very big razor, indeed the largest I ever saw in the blade," to which he had bound with rosined thread "a piece of old file or risp at the back, to keep it steady as a haft." Unluckily the visitor broached the sore subject of the bankruptcy; "a few sharp words passed," and Buchanan, losing his temper, gave his host a kick on the shins. M'Kean thus describes what followed:—

> I started up, and lifted up the fatal weapon in my right hand with which the deed was done, and struck him fairly on the throat with it. I declare he received but one stroke from me; but a dreadful stroke it was, for it was given with great violence. He was sitting on a chair, and

I was standing upon his right-hand side, and when I had given him the stroke, in consequence of feeling it he suddenly lifted up his right hand to defend himself and grasped me by the arm; in his doing this the chair he sat upon flew fairly from him to the left side, and I having the razor still at his throat, followed the stroke and fell down above him, by which he received the whole weight of my body and pressure and force of my arm and the instrument together, as it never went from his throat till I took it out after he was dead.(*a*)

Such is the murderer's version, which Sir Walter Scott has well termed apocryphal. "Buchanan," he remarks, "was a powerful man, and M'Kean slender. It appeared that the latter had engaged Buchanan in writing, then suddenly clapped one hand on his eyes, and struck the fatal blow with the other. The throat of the deceased was cut through his handkerchief to the back bone of the neck, against which the razor was hacked in several places."(*b*) The deed done, the murderer seems to have lost his head. He hurried into the front room where his wife and daughter were sitting sewing, seized a green cloth from the table, and ran back with it to wipe up the blood, bolting the door behind him. His wife, suspecting something wrong, beat upon the door, which the murderer, having thrust the body of the carrier into a closet, opened to her. When she entered with a lighted candle—the room was then in darkness—and saw the great quantity of blood on the floor, her repeated cries of "Murder! Murder!" alarmed the house. M'Kean incontinently fled, taking with him his victim's watch and pocket-book. Hardly was he gone than the neighbours rushed in, and the hue and cry was raised.

The bells were ringing six o'clock as the murderer crossed the Old Bridge; through the Gorbals he sped, never stopping till he was some three miles on his road. In his haste and walking in the dark, he stumbled into the river Cart, and wet and weary continued his way to Mearns, where at a change-house he supped and slept. He shared

(*a*) *Life of James M'Kean*, pp. 41–42.
(*b*) Lockhart's *Life of Scott*, 1837, i. 257.

a bed with "a travelling old man that was coming to Glasgow." Had this venerable wayfarer known who was his bedfellow he had passed but a restless night. Next day the fugitive was up betimes, and going through Mearns Muir, broke his fast at Kilmarnock. Thence he pushed on to Irvine, in the hope of embarking for Ireland. He found a ship in the article of sailing, "the last cargo of coals being in its longboat to go out to the vessel, as she was riding at anchor." The *Friendship*, Captain Cowsie, was bound for Dublin, and in her M'Kean, modestly veiling his identity under the *alias* of James Hogg, obtained a passage. That day, Saturday, 8th October, they weighed anchor at four o'clock. There were four other passengers, and it soon appeared that they were to have a stormy voyage; "the winds being very contrary, the sea ran dreadfully high, and the captain declared that he never saw the like." To sailing-ships outward bound from the Clyde the influence of a south-west gale is not propitious; the *Friendship* spent the week-end in beating about the Firth, and early on Monday morning was forced to put in for shelter to Lamlash Bay, in the Isle of Arran.

This splendid natural harbour, which, I have heard, could accommodate the entire British fleet, is practically landlocked, the Holy Isle, which guards it on the east, leaving but a narrow channel on either hand. Being brought safely to this desired haven the passengers persuaded the captain to land them in the longboat, and the party made for the inn, where they ordered breakfast. (*a*) As there seemed no prospect of the gale abating, our traveller decided to see something of the beautiful island upon the shores of which fortune had cast him; so having hired a horse he rode over the hills by the old bridle-track to Brodick, the bay adjoining that of Lamlash upon the north. Riding round the noble estuary, which must then, for lack of sundry modern improvements, have looked even more

(*a*) This was not the existing hotel; the old inn, which adjoined the present police station, is the hostelry referred to by M'Kean.

lovely than it does to-day, our horseman reached Brodick Castle, "where," as he mentions, "the Duke of Hamilton frequently visits"; and having admired that famous fortalice, he rested at the picturesque old inn, which, though it has long lost its public character, still spreads its fair and spacious front to the roadway below the Castle. "The landlord of the house," he remarks, "was a fine, active old man, who had excellent talents for conversation." These, unfortunately, the guest was then "too dreadfully agitated in mind" to appreciate. He was, however, composed enough to "take a refreshment," the nature of which he does not specify; probably it was something more stimulating than the beverage for which the house was noted. (*a*) After leaving the inn he went "down by the sea-side to a piece of level ground"—the present golf course—"and set off at the full gallop." He had not gone far before his horse stumbled and threw him, which he accepted as a proof "that God Almighty was now pouring down His judgments upon me, and that the very animal was armed against me in order to execute His just vengeance upon me for my sins." Apart from any question of "refreshment," the incident, to one knowing the nature of the ground, is susceptible of an explanation less awful. By four o'clock he had regained his quarters at Lamlash, where after divers further potations he spent the night. Next day he went with a companion "a mile or two into the island to amuse me, on purpose to raise my spirits"; the expedition met with no success. His supper that evening consisted chiefly of brandy; "but the force of this stimulus had no avail to cheer me, for I believe I might have drank as much spirits as would burn me up, without having that effect upon me."

Leaving the storm-stayed travellers to discuss their liquor by the fire, let us now see what was doing on the mainland. William Munro, Town Officer in Glasgow,

(*a*) "Good goat milk quarters may be had this season in the Island of Arran, in a very commodious slated house, hard by the Castle of Brodick."—*Glasgow Journal*, 12th March 1759.

deponed at the trial that on 7th October, having learned of the murder, he went with another officer to apprehend M'Kean. When they reached the house their bird had flown. They traced him to Irvine, where on Sunday they found that a man answering to his description had sailed from that port for Dublin the day before. In view of the state of the weather they were advised that the ship was probably lying-to in Lamlash Bay. The officers then went on to Saltcoats, the nearest point for Arran, and tried to get a boat to take them over to the island, "but the sea was so tempestuous they [the boatmen] would not venture out." Next morning, Tuesday, the weather was still very boisterous and no boat could be had, but the officers, determined to cross at all risks, "got an order from a Justice of the Peace and impressed a boat." With much danger and difficulty they reached Lamlash about 8 P.M. There, sure enough, lay the *Friendship* at anchor in the bay, under the lee of the Holy Isle, but the sea was running too high to permit of them boarding her, so they landed and made for the inn, "where they called for a room and a fire as they were very wet." On the officers being shown into the kitchen they saw, among the party sitting round the fire, the wanted man, whom they knew by sight. Munro whipped out a pistol and bade him surrender, which, perceiving that the game was up, he did. He was taken into a private room and searched, when the carrier's watch and pocket-book—the latter "sewed into his greatcoat"—were found upon him. At 8 A.M. next day, the weather having moderated, the officers took their prisoner back in their boat to Irvine, whence they conveyed him in a postchaise to Glasgow, and by 6 P.M. he was safely lodged in the Tolbooth. John Graham, Munro's fellow-officer in the expedition, "concurred in everything with the preceding witness." There M'Kean remained, undergoing, as he avers, certain spiritual experiences which he describes with unctuous particularity, until removed to Edinburgh for his trial.

James M'Kean at the Bar.
(After an etching by John Kay.)

The proceedings began in the High Court of Justiciary on Monday, 12th December 1796 (*a*). The Right Honourable Robert M'Queen of Braxfield, Lord Justice-Clerk, was on the Bench; Robert Dundas of Arniston, His Majesty's Advocate, appeared for the Crown; the pannel, as we shall see, was not represented by counsel. The indictment charged him with the crimes of murder and robbery:

> In so far as the late deceased James Buchanan, carrier between Lanark and Glasgow, having waited on you on the evening of the 7th of October last in this present year 1796, in the house then possessed by you in the High Street of Glasgow aforesaid, in consequence of a previous invitation by you, you conducted him into a back room in your house, when you the said James M'Kean immediately thereafter upon the said evening . . . did wickedly and inhumanly murder the said James Buchanan by cutting his throat with a razor from ear to ear which occasioned his immediate death, and after giving this mortal wound you the said James M'Kean did, time and place foresaid, wickedly and feloniously rob the said James Buchanan by taking out of his pockets his silver watch and black leather pocket-book, containing £118 Sterling or thereby in Bank Notes and promissory Notes of Banking Companies, besides sundry Bills and Receipts . . . all which you the said James M'Kean carried off and immediately fled, and being then pursued, you were traced to Lamlash in the Island of Arran, where you were apprehended and brought back to Glasgow.

A declaration emitted by him on 12th October, in which he denied his guilt, as also the watch, pocket-book and money, were libelled as productions. The indictment having been read the pannel pleaded guilty to both charges, handing in a written and signed acknowledgment of his guilt. "Have you any counsel?" asked the Justice-Clerk; "No," replied the prisoner, "nor do I desire any but the Almighty." The usual interlocutor finding the libel relevant having been pronounced and a jury empannelled, the Lord Advocate said that although from the judicial confession by the pannel there was full evidence of his guilt, yet in order to satisfy the Court and the country in general of the enormity of the crime his Lordship

(*a*) This account of the proceedings is derived from the report in the *Caledonian Mercury* of 15th December 1796.

would adduce such proof as would, independent of the prisoner's admission, clearly establish the fact and furnish a sufficient warrant for the jury to return a verdict of guilty.

Several of the neighbours who lived in the tenement were then examined. They all told the same tale. Shortly before six o'clock M'Kean came home to tea; in a few minutes were heard cries of "Murder!" and the noise of someone rushing down the common stair; entering the house they found Mrs. M'Kean "in an ecstasy of grief, crying she was ruined and undone; her man had murdered James Buchanan, and fled; the body was in the back room closet." They saw the blood upon the floor, also the fatal weapon; and, in the closet, the dead body of the carrier.

William Nimmo, surgeon in Glasgow, stated that he was summoned to M'Kean's house on the night in question and saw the body of Buchanan, whom he knew. "He discovered a great wound in the throat. The carotid arteries were cut on both sides extending almost to the backbone, which, he had no doubt, occasioned instant death. There was no other wound on the body."

Hugh Allan, change-keeper in Glasgow, deponed that Buchanan was in use to put up at his house. Buchanan told him that M'Kean had invited him [the carrier] to drink tea at his house on Friday, 7th October. In the course of that day Allan delivered a parcel of money to Buchanan, who put it up in his black leather pocket-book. He last saw him alive at twenty minutes to five o'clock that evening. He had seen the pannel in company with Buchanan weekly for a month before the murder. The prisoner, being asked whether he had any questions to put, said that the witness had not told the truth, "but he forgave him."

Officers Munro and Graham gave evidence as to the pursuit and capture of the prisoner, and divers witnesses proved that the watch, pocket-book and money found upon him had been in the possession of Buchanan on the day of the carrier's death. This closed the Crown case, and the

Lord Advocate stated that he would not trouble the Court or jury with any observations, as the case was so clear that it required no comment. The jury were then enclosed, and appointed to return their verdict next day at one o'clock.

On Tuesday, 13th December, when the Court met, the pannel was found guilty as libelled; whereupon Lord Braxfield "delivered his sentiments" in few words, but in such forcible language as to affect in a very powerful degree the feelings of the audience. "On the mind of the prisoner," we read, "they were calculated to make a very strong impression indeed." His Lordship observed that the enormity of the crime, the calm deliberation with which the pannel followed out his purpose and the circumstances attendant upon this foul murder, indicated a mind sunk to the last degree of depravity, and the ghastly deed which he had perpetrated threw a stain upon the human character and reproach upon our country. In pronouncing sentence his Lordship, addressing the pannel "in a suitable and affecting manner," pointed out that the crime he had committed was such as to preclude him from all hope of mercy in this world, and therefore earnestly entreated him to make his peace with God, whose mercy would, if he were truly penitent, be extended to him, great as his crimes had been.

It will be remarked that we have here no sign of the coarse and brutal exultation over convicted prisoners which Henry Cockburn would have us believe to have been upon such occasions the habitual manner of Lord Braxfield.

The Justice-Clerk then pronounced sentence as follows: —That the pannel should be taken from the bar to the Tolbooth of Edinburgh, there to be fed on bread and water till Monday, 26th December, on which day he should be delivered to the Sheriff of Edinburgh and be transmitted from Sheriff to Sheriff till he be lodged in the jail of Glasgow, there to remain until Wednesday, the 25th day of January, on which day, between the hours of two and four o'clock, he should be hanged at the common place of

execution and his body delivered to Dr. James Jeffrey, Professor of Anatomy in the University of Glasgow, to be by him publicly dissected and anatomised. The Court then rose.

"During the whole course of the trial," concludes our reporter, "and at pronouncing sentence, the unhappy prisoner conducted himself with becoming resignation. He is a decent-looking man about 44 years of age, 5 feet 6 or 7 inches high, was dressed in a brown coat, black silk waistcoat and breeches, over which he wore a striped green greatcoat. The Court was uncommonly crowded both days, and an astonishing crowd attended to see the prisoner go into the Parliament House." (*a*)

Among the familiar Edinburgh figures that filled to overflowing the narrow limits of the old Justiciary Court-room was a young advocate of no great distinction at the bar, to which he had been some four years called. But lately crossed in love, he had just published his first literary venture, a little book of ballads after Bürger. This inconsiderable junior was Walter Scott, who, as his son-in-law afterwards recorded, had the curiosity to witness the trial. All his life, indeed, as we know on the same authority, Sir Walter had a passion for reading murder cases, and attended such celebrated trials as were held in Edinburgh in his time. "I have heard Scott," writes Lockhart of the present case, "describe the sanctimonious air which the murderer maintained during his trial—preserving throughout the aspect of a devout person, who believed himself to have been hurried into his accumulation of crime by an uncontrollable exertion of diabolical influence." (*b*) The library at Abbotsford contained, among a large collection of criminal trials, a copy of *The Life of James M'Kaen*, doubtless bought by Sir Walter on its publication, upon which he had written the following interesting marginal note:—

(*a*) *Caledonian Mercury*, 15th December 1796. (*b*) Lockhart, i. 256.

I went to see this wretched man when under sentence of death, along with my friend Mr. William Clerk, advocate. His great anxiety was to convince us that his diabolical murder was committed from a sudden impulse of revengeful and violent passion, not from deliberate design of plunder. But the contrary was manifest from the accurate preparation of the deadly instrument, a razor strongly lashed to an iron bolt, and also from the evidence on the trial, from which it seems he had invited his victim to drink tea with him on the day he perpetrated the murder, and that this was a reiterated invitation. M'Kean was a good-looking, elderly man, having a thin face and clear grey eye; such a man as may be ordinarily seen beside a collection-plate at a seceding meeting-house, a post which the said M'Kean had occupied in his day. All M'Kean's account of the murder is apocryphal. (*a*).

The remainder of the note I have already quoted. Scott and his friend Clerk were not the only people whom M'Kean sought to persuade that he was less black than the facts painted him. Not content with appending to his autobiography a lay sermon on sin, in which he particularly warned his readers to beware of pride and passion, he furnished as a sort of moral bonus a selection of Bible texts bearing on bloodguiltiness, "which," he thoughtfully remarks, "will save the reader the trouble of collecting them himself, as the verses lye scattered in various parts of the Sacred Volume." Four days before his execution he wrote a farewell letter to his wife and children. *The Last Letter of James M'Kaen* was printed as an eight-page penny pamphlet by Brash and Reid, the publishers of the *Life*, (*b*) and was advertised as containing "striking particulars respecting his dreadful situation immediately after he committed the horrid deed, which he omitted to state in his Narrative." On perusal, it appears to have been framed more with the view of catching the public pence than of affording comfort to his afflicted family. As a contribution to our knowledge of the case these reflections of "a hell-deserving creature"—the phrase is the author's—are disappointing, and except from the collector's point of view the tract is but a poor pennyworth.

(*a*) Lockhart, i. 257.

(*b*) James Brash and William Reid, publishers of the "Penny Poets," carried on business in the Trongate from 1790 for nearly thirty years.

On Wednesday, 25th January 1797, the murderer, in pursuance of his sentence, ceased to burden the earth.

Yesterday James M'Kean was executed at the Cross of Glasgow on a new erected gibbet, for the murder and robbery of James Buchanan, the Lanark carrier. He appeared on the scaffold dressed in white, about ten minutes after three, proceeded to the front with a firm and undaunted air, holding a paper in his hand, and after saying a few words to the multitude, which was immense (about 20,000), he gave it to one of the Town Officers. About ten minutes thereafter he mounted the platform with much indifference, and after praying for a few minutes was launched into eternity, without one sympathising tear from the surrounding multitude.(*a*)

Scarcely was he cut down than his indefatigable publishers announced "A Particular Account of M'Kaen's Execution and Final Address on the Scaffold, price One Penny." No copy of this bibliographical rarity has rewarded my research; it is unlikely, however, that we have lost much. What with the *Life*, "price Ninepence," running to three editions, the *Last Letter*, and the *Particular Account*, Messrs. Brash and Reid seem to have made the most of their ugly customer, and might well have spared on the occasion of his last appearance one of those tributes of regret which the *Mercury* reporter missed.

If Mr. Archibald Weir, that supersensitive youth, when he strayed one day into the Justiciary Court, had chanced upon the trial of James M'Kean instead of that of Duncan Jopp, it is just possible that his tortured spirit might have found the business less "hideous." The hanging of the carrier's murderer need not have had so disquieting an effect upon his gorge, and in the subsequent debate at the Spec. his views on the subject of capital punishment would perhaps have been more happily expressed. But then we should lack *Weir of Hermiston;* and although we have plenty of plain truth, where could we find fiction thus superbly coloured?

(*a*) *Caledonian Mercury*, 26th January 1797.

THE BI-CENTENARY OF LORD BRAXFIELD

THE BI-CENTENARY OF LORD BRAXFIELD

> We honour your old Virtues, conformable unto times before you, which are the noblest Armoury. And, having long experience of your friendly Conversation, void of empty Formality, full of Freedome, constant and generous Honesty, I look upon you as a Gemme of the old Rock.
>
> —Sir Thomas Browne.

A PHILOSOPHER of the *carpe diem* school has acutely remarked that we are a long time dead. But it by no means follows that we are long remembered, and indeed the facility with which the world can forget the dead is only surpassed by its reluctance to forgive the living. The vainest of us, having cast into the stream of Time our more or less considerable pebble, must realise the transitory nature of the consequent disturbance, and we may well marvel at the force of a personality so potent as to compass, amid the welter of the generations, the distinction of a bi-centenary. Of the several ways by which such eminence may be attained there is one that surely leads to posthumous renown, a road, however, for obvious reasons none but the boldest dare to travel. A high reputation for wickedness is an unfailing passport to immortality. While the dust gathers deep upon many a fair and gracious memory, you, if only you be bad enough, may count on being remembered. This, you observe, means more than merely not to be forgotten, which is but a cold and negative reward, very different from the lively coronal of remembrance. Whether you proudly reign with Ahab and Caligula, or take humbler rank with Bluebeard and the Tichborne Claimant, the benefit of infamy is assured.

Something of this invidious fame has been conferred by Lord Cockburn upon Lord Braxfield. Cockburn was in no

sense of the term a great judge, but he was a good man and a writer of much charm, so he justly enjoys wide popularity and his opinions are generally received. These two Senators of the College of Justice had, beyond the judicial office which they so variously filled, nothing in common. No temperaments could be more disparate. Braxfield, a rough diamond, inelegant of manner, broad, convivial, strong in mind as in body, humorous after the fashion of Ben Jonson, passionately patriotic, an inveterate Tory, and above all a great lawyer, was the full-blooded son of the Eighteenth Century. Cockburn, well bred, urbane, fastidious, physically slight, a resolute Whig of the Reform brand, and both intellectually and professionally less distinguished than the other, was a child of the new era. Had they met as men—for Cockburn was a boy when Braxfield died—my Lord might conceivably have called his learned colleague a "daam'd auld wife"; Cockburn's retort, if more genteelly phrased, would have been none the less unflattering. But they never did so meet, for Cockburn was not admitted to the Bar till the Justice-Clerk was in his grave, and the forbidding portrait of "the Jeffreys of Scotland" in the *Memorials* is painted by a partisan brush with other people's colours. Hearsay, and political at that, is, as a Lord of Session ought to know, not the best of evidence.(*a*) Happily there is direct testimony on the other side. In this age of compromise and coalition we can hardly conceive the inflammatory effect upon our forebears of divergent political views. The Scot of those days regarded differences in politics and doctrine as equally vital, and imported into the one a bitterness more properly reserved for the other. Cockburn, in writing his *ex parte* account of the sedition trials, says that he recognised "the duty of never letting Braxfield and the years 1793 and 1794 be forgotten," and that he only refrained from publishing it in his lifetime out of consideration for the feelings of the other judges'

(*a*) *Examination of Trials for Sedition in Scotland*, Edinburgh, 1888, i. 87.

relatives.(*a*) His endeavour thus to perpetuate the memory of "this coarse and dexterous ruffian," a singular labour of love, might have failed of its purpose. Fortunately for Lord Braxfield's fame there was exhibited at Edinburgh one autumn in the 'seventies a collection of paintings by Sir Henry Raeburn, into which a certain young advocate with nothing better to do found his way. The half-length of Robert M'Queen of Braxfield irresistibly attracted him; the result was the delightful sketch in *Some Portraits by Raeburn*, and the living picture in *Weir of Hermiston*. So, for numbers who cared neither for Cockburn nor his works, was the Justice-Clerk made a homely and familiar figure, and his name imperishably embalmed in literature.

I don't suppose Lord Braxfield ever gave a thought to the verdict of posterity. He enjoyed life as he had it, heartily and wholly; he did his duty as he saw it, staunchly and unflinchingly, in the face of much public opprobrium. Like him or not as you will, you are bound to yield to him the tribute of your respect, for if not beyond reproach he was indisputably without fear. There are few finer things told of him than that in the letter of his friend John Mowbray of Hartwood, W.S., which I have elsewhere printed.(*b*) All day long Mowbray had sat in the thronged Justiciary Court, listening to the sedition trial, before Lord Braxfield, of Citizen Margarot, the Friend of the People. The case lasted till four o'clock of a black winter morning; that truculent demagogue had been sent to Botany Bay, amid furious threats of personal violence against the judge vented by an excited mob in the gallery, and Mowbray anticipated trouble. When the Court rose the Justice-Clerk put on his greatcoat and trudged away home to George Square, "down Libberton's Wynd and up Hume's Close, two very dark and dangerous passages." Apprehensive for the old man's safety, Mowbray followed. At the head of Hume's

(*a*) *Examination of Trials for Sedition in Scotland*, Prefatory Note.

(*b*) "The Real Braxfield," *Juridical Review*, May 1914; reprinted in *The Riddle of the Ruthvens and Other Studies*, 1919, pp. 39–65.

Close Braxfield became aware of him, and turning round said, "Is this you, Mr. Mowbray? What brings you here at this time? This is not the road to your house." Whereupon Mowbray explained that he could not be at ease until he had seen his Lordship safe to his own door. But Braxfield would have none of his convoy. He thanked him; there was no danger, he was only doing his duty, which, he added with a characteristic chuckle, he couldn't have done had he paid any regard to the mass of threatening letters he received daily; "but they gaed a' the same gate." And so the stout old judge strode off alone. Memories of Captain Porteous and of how an Edinburgh mob could deal with unpopular officials did not disturb him. Let us, despite his Lordship's inhibition, follow him home.

I often think it is a pity that in a place of such historic interest as Edinburgh the houses do not bear upon the fronts some record of their more famous occupants. In a city relatively so small many a house has held from time to time divers distinguished tenants, whom one lacks patience to search for in the columns of old directories. Indeed, even these guides are not infallible. The first Edinburgh Directory of 1773–74 gives Braxfield's address as George Square, *tout court*, and so do all later issues, till his death in 1799. How No. 28 acquired the honour of being known as his house does not appear, but the legend was crystallised by Harrison in his *Memorable Edinburgh Houses*, where he categorically states the "fact," and other writers have followed suit. That R. L. S. himself was a victim of this vulgar error is manifest from his references to the position of Lord Hermiston's house in the Square. Often must devout Stevensonians, pausing before No. 28, have imaged the stalwart figure mounting those steps, or beheld, in a fervour of enthusiasm, the gurly face glowering with its "small quick eye" from out that dining-room window. I, myself, fresh from reperusal of the magic tale, have seen these things; and, alas! unless Lord Braxfield visited

at that house he had no more to do with it than you or I —a fine commentary on the value of tradition and the venerating of landmarks. Lawyers and others through whose hands the title-deeds of the real and of the reputed residences chanced to pass must, of course, have been conversant with the truth; but nobody took the trouble to proclaim it, and not until Mr. Forbes Gray examined the writs of the property, and communicated his discovery to the press in an interesting article,(*a*) was the matter made common knowledge and the fact established once for all. Thus No. 13, so long kept out of its rights, received due recognition, and No. 28, deprived of its spurious fame, sank into deserved obscurity.

When in the last quarter of the eighteenth century Edinburgh began, in Robert Fergusson's phrase, to "spread around: her bonny wings on fairy ground," her earliest flights were towards the Meadows. Brown Square, at the west end of the present Chambers Street, was her first venture beyond the Cowgate valley; the formation of George Square, a more notable improvement, was the next advance. Theretofore people had lived piled up one above another in the flatted tenements of the Old Town, and well-to-do citizens were quick to see the convenience of having a "self-contained" house. Curiously enough, as an instance of Time's revenges, the greater mansions of Edinburgh are nowadays being "reconditioned" into separate flats. Among the first emigrants from the real Auld Reikie to the southern fields, flitting from the historic but insalubrious purlieus of Covenant Close, was Mr. Robert M'Queen of Hardington, advocate (who had not yet succeeded to the paternal acres), then the leading counsel of his day, and in receipt, as Ramsay of Ochtertyre has recorded, of prodigious fees.(*b*) In 1770 he acquired from James Brown, architect in Edinburgh, for £1500, a piece

(*a*) *Scotsman*, 2nd April 1921.

(*b*) *Scotland and Scotsmen*, i. 380-393. This reference embraces my further citations from Ramsay.

of ground on which he built No. 13, "the third house from the west in the north row of the great Square, building by the said James Brown." Here, then, lived my Lord for the remaining twenty-nine years of his life; here he laboured at his law papers, and entertained his friends upon many a glad occasion; here his two consorts successively reigned—more happily, let us hope, than Mrs. Weir—and his children grew up to be well seen in the world; here his last days were dragged out beneath the fell shadow of disease, and after long, painful passage of the dark vale his strong soul found rest. The house, materially unchanged, continued down to our own time in private occupation, until in 1904 it was transformed into a College of Agriculture. As the required structural alterations were mainly at the back, the principal rooms look much as they must have done in Braxfield's day. My Lord, who, as Ramsay relates, was an enthusiastic farmer of his own lands in Lanarkshire, would have acknowledged the fitness of the appropriation, and the spirit of the old judge may be supposed all genially to preside over the studies of the incipient husbandmen.

Robert M'Queen coming, a landward lad, to the then close corporation of the Parliament House, had none of the hereditary advantages enjoyed by the aristocracy of the robe. His grandfather was a gardener, his father a country writer, and he himself got his education at Lanark grammar school. John M'Queen, from being baron-bailie to Lord Selkirk—a post similar to that held by Bailie Macwheeble in *Waverley*—rose to be Sheriff-Substitute for the Upper Ward of Lanarkshire, married the daughter of a county laird, and bought the lands of Braxfield, a small but picturesque property upon the banks of Clyde, within a mile of Lanark. There on 4th May 1722 his eldest son Robert, first of a brood of seven, was born. The boy was destined for the father's office; by-and-by he was sent to Edinburgh and apprenticed to Thomas Goldie, W.S., under whose care, according to his first biographer, the future

Braxfield House, Lanarkshire.

Justice-Clerk thus early "began to perceive and to appreciate the beauty and systematic order and arrangement of the feudal law, a branch of professional knowledge in which he was far superior to any lawyer of his time."(*a*) These recondite joys, Ramsay tells us, were varied, on holidays at Braxfield, by bird-nesting in the paternal trees. It happened that Robert Dundas of Arniston, son of the first Lord President Dundas, having married the heiress of Bonnington, an estate about a mile from Braxfield, got to know the lad, and became enamoured of his company and conversation. From these he augured that Robert was too promising a boy to be made a mere country lawyer, and urged his father to send him to the Bar. "The advice of such a man," says Ramsay, "was equal to a command"; and after the usual course of study at Edinburgh College, Robert, in his twenty-second year, was on 14th February 1744 admitted a member of the Faculty.(*b*)

Many fledgling advocates, for lack of brains or backing or of both, are doomed to attenuate their souls (in more senses than one) by long unproductive pacing of our national Salle de Pas-Perdus. Not so the young man from Lanark. He had the capacity, and the chance of showing it was not delayed. We are not here concerned with the momentous happenings of the Forty-five except as they affected his fortunes. The forfeitures of the estates belonging to the Jacobite lairds who had taken part in the Rising produced a heavy crop of litigation in the Court of Session. M'Queen's abilities led to his employment in these lawsuits, and he was retained as counsel on the part of the Crown. Here he found a field for the full display of his knowledge and skill as a feudist. His appearances engaged general attention; he deservedly attracted the notice of practitioners, and soon came into high estimation as a sound lawyer. Agents liked his easy unaffected manners, his

(*a*) Biographical Sketch of the late Rt. Hon. Robert M'Queen of Braxfield, Lord Justice-Clerk, *Scots Magazine*, May–June 1801, lxiii. 303–304.

(*b*) Faculty Records.

luminous and convincing mode of stating his opinions, and his happy and energetic method of pleading his causes.(*a*) The fact that Dundas, his friend and patron, was now Solicitor-General for Scotland would no doubt contribute to the young counsel's rapid rise. In the same year he was installed as Sheriff-Substitute at Lanark to assist his father in that office, which he continued to do until his increasing practice required his whole time and attention.(*b*)

In the thirtieth chapter of *La Dame de Monsoreau*, that intriguing romance, the great Dumas justifies by the custom of the time his introduction of so many of his characters into so many hostelries. Eighteenth-century Edinburgh resembled in that respect the Paris of the Valois. The important part then played by taverns in the daily life of the citizens can now hardly be conceived. Not only were they, the taverns, as the old-time equivalent of the modern club and refreshment bar, places of social pleasure and recreation, but in them was conducted all sorts of solemn business. There the merchant made his bargains, the physician met his patients, the lawyer interviewed his clients. As Sir Alexander Boswell has pleasantly sung:—

> O'er draughts of wine the Writer pen'd the will;
> And Legal Wisdom counsel'd o'er a gill.(*c*)

Indeed so identified was the tavern with the law that it had become the very vestibule of the Temple of Themis. "The usual manner of preparing counsel was to convene in a tavern, where they were met by the agent who conducted the cause. At these consultations Mr. M'Queen peculiarly shone; abstract and difficult points seemed to vanish before him, and the openness and candour with which he gave his opinion were highly to his honour."(*d*) In addition to his other qualifications the future Justice-Clerk had as good a

(*a*) Biographical Sketch, pp. 304-305.
(*b*) MS. History of the House of Braxfield, by Thomas Reid.
(*c*) *Edinburgh, or The Ancient Royalty*, 1810, p. 24.
(*d*) Biographical Sketch, p. 305.

head for liquor as for law and was equal to any amount of either, which gave him a great advantage over his weaker brethren. It is interesting to know that as a matter of etiquette the choice of the beverage consumed at consultations was left to counsel, who usually condescended upon sherry in a mutchkin stoup (*a*) as "mellering to the organ."

Ramsay, M'Queen's contemporary at the Bar, has preserved his impressions of the popular pleader. His judgment as a Whig gentleman of the old school, free from the rancorous spirit which later informed Scots politics, is of special value. Among the many eminent lawyers of the day, he says, M'Queen's merits were conspicuous. His frankness and honesty commended him to agents who preferred substance to show. With the judges he was equally a favourite. "It was obvious to everybody that his papers and pleadings made a deep impression on the Court, from his keeping close to the matter at issue, without any rhetorical flourishes or digressions." In the fields of feudal and civil law he was easily first. Another authority tells us that M'Queen "liked pleadings before the Lord Ordinary better than Inner House memorials," which, being interpreted, means that he preferred oral argument before the judge of first instance to the written pleadings whereby cases were then presented to the whole Court—the old Fifteen. "Of these pleadings he had a very large share; he is known to have repeatedly pled from 15 to 20 causes in one day." The labour involved in mastering the legal points as well as the relative facts and circumstances of so many concurrent cases demands mental and physical powers of singular strength. Busy counsel before and since, having accepted more work than they could conveniently attend to, have been accused of sacrificing their less lucrative cases. Not so M'Queen, who "never declined doing his duty in any cause; he was remarkably diligent and active.

(*a*) Somerville's *Own Life and Times*, p. 373.

The numerous papers which he wrote are proofs of this. His style of writing was extremely clear, distinct, and energetic, although neither his language nor his pronunciation were much polished." (*a*) As an oral pleader Ramsay thought that he undervalued rhetoric too much, trusting chiefly to the strength of his intellect and his skill in supporting unadorned facts by principles. This was the reason why he so seldom figured in the Courts of Exchequer and Justiciary, where a more ornate style of oratory obtained. He lacked the silver tongue, the plausible and flowing eloquence of the popular advocate. Throughout his long loquacious life M'Queen sturdily adhered to the natural and kindly Scots which as a boy he had learnt at his Lanark school in the Broomgate, and both as counsel and judge he scouted the nipperty-tipperty English affected by the followers of fashion. But this foible of his had little influence on his success, for it is said that few important and remarkable cases occurred during his thirty-two years' practice in which on one side or the other he was not employed. A consideration of these would take us too far, but mention must be made of the great Douglas Cause, that Brobdingnagian lawsuit, which absorbed for eight years the energies of all the big wigs of the Bar. M'Queen was of counsel for the claimant, and his hand may be traced in the admirable memorial prepared on behalf of his young client. The oral pleadings in the Court of Session occupied the then unprecedented space of twenty-one days; seven counsel addressed the Court for the pursuers, the Duke of Hamilton and others, and seven for the defender, Archibald Douglas of Douglas, M'Queen's speech being delivered on Friday, 18th July 1766.(*b*) As everyone knows, the Scots judges were equally divided and Mr. Douglas lost his case by the casting vote of Lord President Dundas, to the high indignation of the populace, who indicated their dissent

(*a*) Biographical Sketch, p. 305.

(*b*) *The Douglas Cause*, A. Francis Steuart, 1909, p. 19.

from the judgment by smashing his Lordship's windows. On appeal to the House of Lords, however, the decision was reversed, and Mr. Douglas was found to be his mother's son and the heir of his uncle, the Duke of Douglas.

When Dundas became Lord Advocate in 1754 he appointed M'Queen one of his deputes, an office which the latter filled with his wonted efficiency and zeal. In 1760 Dundas succeeded his father as Lord President. Both he and his brother Henry (*a*) were old friends of M'Queen, and having the highest opinion of his abilities, were long desirous of seeing him on the Bench. "Mr. M'Queen for some time resisted their importunities. Being in the receipt of much more money as a barrister, he conceived that duty to his family required perseverance in that situation." The salary of a Scottish judge was then but £640; the appointment would present few attractions to the best-paid counsel at the Bar. In 1776, however, a vacancy occurred on the death of Lord Coalston, and M'Queen was at last prevailed upon reluctantly to accept a judgeship, yielding to the solicitations of the Dundas brethren—Henry Dundas was then Lord Advocate —"aided and seconded by the Earl of Suffolk, Secretary of State." So sensible was Lord Mansfield of this acquisition to the Scots judiciary and of M'Queen's disinterested action in the matter, that he spoke of it in the highest terms of approbation.(*b*) On 13th December 1776 the new judge took his seat with the judicial title of Lord Braxfield, after that of his Lanarkshire estate.(*c*) The old judges used always to be known by their territorial designations, a custom nowadays for divers cogent reasons pretermitted. One regrets the change; Lord Smith or Lord Brown may be as learned lawyers, but their titles are surely less euphonious than those, say, of Lords Aller-

(*a*) Henry Dundas, afterwards Lord Melville, was Solicitor-General for Scotland in 1766 and Lord Advocate in 1775.

(*b*) Biographical Sketch, p. 306.

(*c*) Books of Sederunt.

muir and Caerketton. Lord Hermiston, you remember, took *his* title from his wife's lands.(*a*)

Though M'Queen had sacrificed so much in leaving the Bar no further advancement came his way until on the resignation of Lord Auchinleck, father of the great little Boswell, he was made on 1st March 1780 a Lord Commissioner of Justiciary,(*b*) an office which, together with that of ordinary Lord of Session, he held for several years. Lord President Dundas died in 1787; his place was taken by Lord Glenlee, the Sheriff Miller of *Catriona*, who thus became head of the Court, and was on 15th January 1788 succeeded by Braxfield as Lord Justice-Clerk of Scotland.(*c*) This was the highest round of the professional ladder which he was destined to reach.

The achievement of M'Queen has been insufficiently appreciated. In these democratic days anyone may go to the Bar, and if he have the requisite brains and luck there is no honour to which he may not aspire. It was far otherwise in the bad old times. The Parliament House was then a highly exclusive club, into which the entrance of a member lacking the indispensable qualifications of birth and breeding called for unique self-confidence and courage. Yet this gardener's grandson, with his rough manners and landward speech, won not only his professional spurs, but the friendship and esteem of his brethren and of the judges, and rose by distinguished stages to be president of the criminal Court. How great must have been the qualities of head and heart which, despite so heavy a handicap, enabled their possessor to win the race. Well might young Walter Scott, in the dedication of his thesis on admission to the Faculty, thus address his Lordship:—

Viro nobili Roberto Macqueen de Braxfield, inter quæsitores de rebus capitalibus primario, inter judices de rebus civilibus, senatori dignissimo, perito haud minus quam fideli juris interpreti; adeoque, in utroque

(*a*) Another difference between the real and the imagined judge is that Weir was Lord Advocate, an office never held by M'Queen.

(*b*) MS. List. (*c*) *Ibid.*

munere fungendo, scelera sive debita severitate puniendo, sive suum cuique tribuendo et tuendo, prudentitia pariter atque justitia, insigni; hasce theses juridicas, summa cum observantia, sacras esse voluit Gualterus Scott.(*a*)

Before entering upon the vexed question of Lord Braxfield's conduct on the Bench let us see what manner of man he appeared to his contemporaries, whose judgment is worth bushels of posthumous censure, in the Elizabethan sense of that term. And at the outset I may say that it is not here proposed to invite the reader to eat of the chestnut tree which is in the midst of Braxfield's garden: the harvest is plenteous, but the fruit has lost by reason of repeated gatherings its pristine flavour, and much of it must be rejected as apocryphal. Yet a brace of anecdotes, which I myself was the first to publish, may, if the citation is permissible, be recalled without satiety. My Lord presided one Saturday at e'en at a circuit dinner in the King's Arms, Dumfries. It was the last day of the sittings; the company was of the best, the fare and the wines were equally commendable, and the sederunt was prolonged far into the small hours of the Sabbath. Lord Hailes, the other judge, for some reason had not been of the party and probably bemoaned his loss. He called it "a shameful debauch"—the grapes were sour—and remarked that at least one reveller, Alexander Young, then acting as Clerk of Justiciary, was too unwell to go to church next morning. Braxfield, despite the heavy weather of the night before, had been prominent among the worshippers, and took occasion thus to admonish Young, who tells the story: "At a' rates ye should hae cam' to the kirk, for though mony a scoondrel cams there regular, few honest men stays away."(*b*) The other tale I have in mind relates to old James, Lord Braxfield's confidential man and long in his service. One day James gave his master notice; he must

(*a*) *Latin Thesis on a Title of the Pandects:* "De Cadaveribus Damnatorum," 11th July 1792.—Advocates' Library.

(*b*) *The Riddle of the Ruthvens*, p. 51.

leave at the next term. "What's wrang noo, James?" inquired my Lord. "Naething but your Lordship's temper; ye're sae passionate," was the reply. "Hoots, man, what needs ye mind o' that?" said his master; "ye ken weel it's nae sooner on than it's aff." "Very true, my Lord," rejoined James, "*but then it's nae sooner aff than it's on!*"(*a*)

One of the earliest and best appreciations of Lord Braxfield is that contained in the *Scots Magazine* already cited. Published on the second anniversary of his death and for readers who would be familiar with the personality of the subject, it is absurd to suppose that the portrait is not a more faithful likeness than Cockburn's.

> Lord Justice-Clerk was an affectionate husband and a tender parent; he had a warmness of temper and benevolence of heart which made him highly susceptible of domestic attachment. As a companion and a friend he was peculiarly beloved by such as stood in those relations to him. He had an openness of manners and was so easy of access that his friends were never disappointed when they wished to have his advice. His engaging, we may say fascinating manners rendered him a most agreeable member of society. The company was always lively and happy of which Lord Justice-Clerk was a member.(*b*)

I wonder whether Stevenson ever saw that statement, which to me has about it the ring of truth, and whether had he done so it would have affected his judgment, patently taken captive by Cockburn. But what then would have become of Archie Weir's tragedy?

> Lord Justice-Clerk was of middle size and robust make; he was what is commonly expressed by the terms hard featured, but had a small quick eye and expressive countenance, impressive of mildness and intelligence.(*c*)

This description is borne out by the Raeburn portraits.

Ramsay, who walked the Parliament House with him, says that when called to the Bench M'Queen was one of the most popular characters at the Bar, "and what was rare indeed, seemed to have no enemies." He describes

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(*a*) *The Riddle of the Ruthvens*, p. 64.
(*b*) Biographical Sketch, p. 388. (*c*) *Ibid.*

him as a man of vigorous, comprehensive mind, warm affections, and communicative disposition; a pleasing and interesting companion.

If his wit and humour would have revolted Lord Chesterfield as coarse and at times unseemly for his station, yet in his highest glee he was always pleasant and good natured, most desirous to oblige and inform. As a proof of his social powers there was a number of people warmly attached to his person, who praised the qualities of his heart no less than those of his head. Nothing, indeed, could exceed his zeal or industry to serve the interest of his friends and allies. And he had reason to plume himself on his success.

All his life he was fond of pleasure and not very delicate or guarded in its pursuit. Though long accustomed to mix with persons of good breeding and position "he never could shake off his original manners or smooth his rough corners." But it is probable from what we know of the man that this was largely deliberate, and was persisted in as a protest against the preposterous affectation of Anglicanism with which in the second half of the century genteel Edinburgh was so fatuously smitten. When Auld Reikie's "best" people were taking lessons in the English tongue from an Irish actor (*a*)—whose only title to remembrance it is to have begotten Richard Brinsley Sheridan—we can imagine how Braxfield would exaggerate his broad Scots and fortify the quality of his humour. As Mr. Francis Watt has well observed of him in his admirable study: "His seemed the voice of old Scotland protesting against a degenerate and effeminate time." (*b*) He swore "like an ensign of the last age in his teens" and his after-dinner stories scandalised the godly. Ramsay thought that in some ways he resembled Robert Burns. At least, as we know on other authority, he shared the poet's passion for Scottish song—and doubtless also for "sculduddery," which a respectable antiquary once defined for me as the universal language.

(*a*) *Scots Magazine*, 1761, p. 391.
(*b*) *Terrors of the Law*, 1902, p. 105.

The truth is that the so-called social amelioration which Braxfield had lived to laugh at was mainly sham. Fashionable folk read high-flown poetry and flatulent novels, and rigidly observed a fantastic code of etiquette, but despite their vaunted culture and refinement their morality was even worse than their fathers'. "In no respect," writes William Creech, "were the manners of 1763 and 1783 more remarkable than in the dignity and delicacy of the one period, compared with the looseness, dissipation and licentiousness of the other. Many people ceased to blush at what would formerly have been reckoned a crime."(*a*) He adds divers examples of deterioration in manners and morals among the citizens whom as Lord Provost he was called upon to govern, ranging from the multiplication of brothels and the alarming increase of serious crime, to the building of a public cockpit. "The Ten Commandments," he quaintly laments, "were as little known as obsolete Acts of Parliament." In such a society Braxfield's failings would seem less flagitious than they did to Henry Cockburn.(*b*)

A new and valuable light is thrown upon the personality of Lord Braxfield by a manuscript memoir of his Lordship written by Alexander Young of Harburn, W.S., which I discovered in Edinburgh University Library and printed for the first time in 1914.(*c*) Young, a lifelong friend of Braxfield, knew Sir Walter intimately, and his assistance is acknowledged by Lockhart in the preface to Scott's *Life*. He wrote his reminiscences in 1838, as a protest against the misrepresentation and injustice from which Lord Braxfield's memory then suffered in connection with the movement to erect on the Calton Hill a public memorial to the "martyrs" of the political trials of 1793 and 1794,

(*a*) *Edinburgh Fugitive Pieces*, 1815, p. 101.

(*b*) "Coarse and illiterate; of debauched habits, and of grosser talk than suited the taste even of his gross generation."—*Sedition Trials*, i. 86.

(*c*) Memoir of Robert Macqueen of Braxfield, Lord Justice-Clerk, by Alexander Young Esq. of Harburn, W.S., Edinburgh, 1838.—Edinburgh University Library, David Laing MSS. Div. ii. 113.

and for the purpose of vindicating his Lordship's character as a man and a judge from undeserved aspersion. He also wished to refute the famous "checkmate" story, fathered upon Braxfield by Lockhart in his first edition. As to the anecdote he achieved his purpose; in his larger object, so far as my judgment goes, he was equally successful.

During the whole of Lord Braxfield's progress from the time he left the Bar until his death, I was in habits of strict intimacy and friendship with him, in so much, that I believe hardly one week passed in all that time in which I had not some intercourse with him either in town or country, both during Session and Vacation. I humbly think, therefore, that unless I was totally unqualified to form a correct judgment of character or had a very undue partiality and affection for him, I must have known whether or not he merited that odium and reproach which of late years has been cast on his conduct as a gentleman and his proceedings as a judge.

This however I will take it upon me to say, that he was one of the most kind, benevolent, cheerful and agreeable men I ever knew, most hospitable and attentive in an eminent degree to all his neighbours, and as a judge, I never till lately heard a public opinion uttered concerning him except in praise. He was a great friend to dispatch in business, and there never was insinuated any complaint of undue favour or partiality displayed by him in the whole course of his judicial career, which is more than I can say of some very eminent judges who sat on the Bench at the time with him.

He was a very good scholar and particularly conversant with the Latin classics, of which, as I was then pretty much master of the Latin language myself, I thought I could form a correct judgment. In general literature it appeared to me that he was somewhat deficient, and I remember well that Shaftesbury's *Characteristics*, the works of Sir William Temple and some of Swift's prose works were the only English authors which he said to me he had read out and out and dipped into oftener than once.

The defects in his Lordship's character, I either had not the penetration to discover, or they were such as I at the time viewed with great toleration and charity. In regard to his conviviality, admiration and praise of the fair sex, having been often in Ireland, I thought his Lordship as to these very much resembled some of the jovial spirits with whom I had associated in that country.

Against this direct testimony to Lord Braxfield's scholarship is the *ipse dixit* of Cockburn: "Except Civil and Scotch (*sic*) Law, and probably two or three works

of indecency, it may be doubted if he ever read a book in his life"! (*a*)

Young introduced to Braxfield one of his Irish acquaintances, named Patrick, "a considerable merchant in Dublin, chiefly in the wine trade." This expert nicely differentiated between the festive habits of Lord Braxfield and those of his fellow Senator, Lord Newton, the most eminent toper in the annals of the Parliament House :—

> Amongst the number of his acquaintances in Scotland Mr. Patrick ranked several of my friends and particularly Lord Justice-Clerk M'Queen, his son-in-law Lord Armadale, and Mr. Charles Hay of Newton, with all of whom he said on his different visits to Scotland he could scarcely tell whether his head or his heels were uppermost. Both Lord Braxfield and Mr. Hay, he remarked, took a considerable quantity of wine, of which the former was a judge, and the latter the greatest drinker; that Lord Braxfield was a great admirer of the fair sex, of which he thought Mr. Hay made little account. . . .
>
> That my friend Mr. Patrick had made a just estimate of two of his Scotch acquaintances I think no doubt could be entertained, especially that though they both indulged in taking a good deal of claret, Mr. Hay was the most copious in his libations. In fact, much as I was in company with Lord Braxfield, I can hardly say I ever saw him the worse of liquor except on one particular occasion.

The exception occurred at Dumfries, when his Lordship reproved Young for not going to church "the morning after"! Chambers mentions Braxfield as one of the habitués of the famous house-of-call in the Potter Row kept by Lucky Flockhart, immortalised as the Mrs. Flockhart of *Waverley*; other constant customers were Lord Melville and the father of Sir Walter Scott.(*b*) Cockburn admits that Bacchus had no easy victory over Braxfield, who never allowed his potations to interfere with his work. "He was all his life accustomed to rise at an early hour; he was regular in his attendance to business as a judge; even in winter he was in use to be upon the Bench at nine o'clock in the morning."(*c*) Counsellor Pleydell, you remember, was equally precise in

(*a*) *Sedition Trials*, i. 87.
(*b*) *Traditions of Edinburgh*, 1825, ii. 292.
(*c*) Biographical Sketch, p. 388.

his punctual daily attendance at the Parliament House. Indeed, in view of the fierce and endless debaucheries of the Edinburgh of that day, which killed Robert Fergusson and permanently damaged Burns, Lord Braxfield should be regarded in respect of liquor as a shining example of moderation. It is said that after his death a subsequent occupier of No. 13 George Square complained to the proprietor who then owned the house that the wine cellar was always full of water, and was informed that his late Lordship, finding the cellar inadequate, had caused deepen it, hence the invasion of the alien element. Of my Lord's wine cellar at Braxfield there will be a word to say later.

Young gives us other interesting glimpses of Lord Braxfield's tastes and ways. He was, it appears, so devoted to cards that he carried a whist-table with him in his travelling-coach when he "rode the circuit," and played innumerable rubbers with his colleagues and the advocates-depute, whereby the tedium of the journey was agreeably beguiled. Sometimes the conditions were more arduous, for in 1784 he and Charles Hope, afterwards Lord President, literally rode a whole North Circuit, and the Findhorn being in flood, were obliged to go twenty-eight miles up the bank before they could find a bridge.(*a*) Four years earlier, on Braxfield's appointment as a Lord of Justiciary in succession to Lord Auchinleck, that gentleman's irrepressible offspring, James Boswell, published his amazing pamphlet, in which he inveighed against the vices of the criminal judges in general and their methods of conducting circuits in particular.(*b*) How his Lordship viewed this tactful and well-timed effusion is not recorded.

Braxfield was particularly fond of old Scots songs, "taking equal delight in words and music," and Young has preserved a pleasant picture of the post-prandial symposia arranged "for providing entertainment to his Lordship in

(*a*) Cockburn's *Circuit Journeys*, 1889, p. 323.

(*b*) *A Letter to Robert Macqueen, Lord Braxfield, on his promotion to be one of the Judges of the High Court of Justiciary.* Edinburgh, 1780.

that line." "Muirland Willie," "Fye, Let us a' to the Bridal," and "My Jo Janet" were his special favourites, with one rendering of which my Lord was never satisfied, demanding repeated encores. We know, too, as appears from a list of membership, dated 1st May 1775,(*a*) that he belonged to the Edinburgh Musical Society, which met in St. Cecilia's Hall at the foot of Niddry Street in the Cowgate, described by Cockburn as "our most selectly fashionable place of amusement."

There is no record of Braxfield's connection with sport, and we cannot tell whether like other busy lawyers he enjoyed on Bruntsfield Links "a turn at the golf on a Saturday at e'en"; but it is said that when at the Bar he was captain of a Volunteer corps. His learned friend Andrew Crosbie, the original Counsellor Pleydell of *Guy Mannering*, was likewise capable of other than purely legal combat, being in command of the Edinburgh Defensive Band during the American War—

> Colonel Crosbie takes the field,
> To France and Spain he will not yield.(*b*)

Sir Walter Scott was an equally zealous volunteer.

Pious persons have been surprised and shocked by Ramsay's remark that Lord Braxfield was in his own estimation a sincere Christian. As a boy he had received a strict religious upbringing, and of this, says Ramsay quaintly, "he retained all along a due sense, being thoroughly persuaded of its truth, though it did not always produce suitable fruits or make him set a watch on his lips." That his Lordship regularly conformed to common religious practice appears from the fact that he occupied as a heritor a pew of ten sittings in Lanark Parish Church, of which he and all his family were members.(*c*) In Edinburgh, both as advocate and judge,

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(*a*) *Saint Cecilia's Hall*, 1899, p. 296.
(*b*) Chambers *Traditions*, ii. 257.
(*c*) MS. History of Braxfield.

Braxfield House, Lanarkshire.
The original front and courtyard.

he was a seatholder in the Tron Kirk,(*a*) and subject to the "jarrin' twang" of the doleful bell which so distressed poor Fergusson. When on circuit, as we have seen, he was punctilious in the article of church-going. Into Lord Braxfield's spiritual state we are not here concerned to pry, but it may be pointed out that he was wholly free from any taint of that canting hypocrisy which has disfigured so many eminent professors. Neither was he in the same case with such natures as Fergusson and Burns, who were victims of the abnormal mental condition known to experts in psychiatry as cyclothymia, wherein, to the confusion of their biographers, remorse and despair alternate with reckless realisation of the joy of living. Braxfield was entirely sane. "So exuberant were his spirits," says Ramsay, "that even in his sober hours he might be said to be in a state little short of inebriety." No clouds of so-called religious melancholy ever darkened that powerful mind. Yet we cannot read his impressive judicial addresses in passing sentence of death on such hapless criminals as Deacon Brodie and James M'Kean without a very real sense of my Lord's sincere concern for the eternal future of the condemned. The famous *obiter dictum* touching the Founder of our faith, alleged by Cockburn to have been uttered upon the trial of Gerrald, has been accounted blasphemous; I shall have something to say about it later. As Mr. Francis Watt has well observed of that and similar sayings attributed to Lord Braxfield, they were probably asides uttered during the proceedings, and meant only for the private ear of his colleagues on the Bench, which, told and retold out of Court, lost nothing in the telling. The worst of them, the celebrated "checkmate" anecdote, has been finally exploded.

In pronouncing moral judgments on the great figures of history the mistake is often made of applying our modern standards to their so different conditions. It is

(*a*) Butler's *Tron Kirk of Edinburgh*, 1906, pp. 306, 312.

absurd, for instance, to estimate the conduct of Mary, Queen of Scots, by the twopenny measuring-tape of to-day's proprieties, or to regard the doings of Rob Roy from the standpoint of a Collector of Customs and Excise. Those who condemn Lord Braxfield as a crapulent and foul-mouthed old pagan — "his religion railing and his discourse ribaldry"—are strangely ignorant or forgetful of the manners of eighteenth-century Edinburgh. Everybody drank too much, swore too hard, laughed at everything, believed in little, and blushed at nothing. But one thing Lord Braxfield did do, faithfully, with a single eye and an undivided heart—his duty. It was a corrupt age, most officials had their price, and he was above suspicion; it was a self-indulgent age, and he wrought late and early at what work was given him to do; it was a naughty age, and he was a good husband, an affectionate father, a loyal friend, and he left to his children the heritage of his high reputation and an unstained name. If he sat too long over the decanters, and if the raciness of his humour was inordinately pronounced, these were foibles which many of his contemporaries, honourable and upright men, were content to share. His critics may be more nice of speech and less robust of stomach, but most of them would be all the better for some of his Lordship's brains.

It is in his capacity of a criminal judge alone that Lord Braxfield's judicial deportment has been impugned; the ability and integrity of his conduct of civil causes is unquestioned. Even Cockburn admits him a dexterous and practical trier of ordinary cases, but calls him as a Lord of Justiciary "a disgrace to the age," the "indelible iniquity" of whose doings it is impossible too severely to condemn. Harsh alike to prisoners and counsel, he was never more in his element than in hounding with brutal and insulting jeers some wretched culprit to the gallows.(*a*) Now I have had occasion in another connection minutely to examine the

(*a*) *Memorials of His Time*, 1856, p. 115.

records of three capital cases at which Braxfield presided as Lord Justice-Clerk, namely, those of Deacon Brodie in 1788, Major Kinloch in 1795, and James M'Kean in 1796, and as all these trials, being very notable in their day, were fully and accurately reported, they afford an excellent opportunity to test the truth of Cockburn's allegations. And with regard to Brodie's case, the thing that strikes the professional reader is the amazing mildness of Lord Braxfield in the face of John Clerk's intolerably rude and violent demeanour to the Bench. When I first read the suppressed passages, now printed in the report of the trial,(*a*) I trembled at the doom which must await the counsel who should so beard the savage Braxfield in his lair, and expected Clerk to be sent straightway from the bar to Botany Bay. (You perceive that I was yet in thrall to Cockburn.) But my Lord bore these minatory insults with dignified composure, and his leniency to the offender speaks loudly for his patience and good nature. As to the pannels, both the gallant Deacon and the pitiful partner of his recreations were plainly guilty and the prejudice against them was intense, for what sympathy could such housebreakers expect from a jury of responsible householders? Yet Braxfield saw to it that they had a fair trial, and every latitude was given by him to the defence. The admirable spirit of his final address to the prisoners I have already commended. The Kinloch case is remarkable as being the first in Scotland in which the criminal responsibility of the insane was seriously considered.(*b*) Tried by an incompetent or careless judge the result might well have been a tragedy. The case was at once difficult and delicate —the murder of a reigning baronet by his brother and heir, a victim of delusional insanity, with lucid intervals—and the position of the family, whose evidence was indispensable, was peculiarly painful. Here, if anywhere, was the occasion for a "coarse and dexterous ruffian" to let himself go.

(*a*) *Trial of Deacon Brodie*, 1906, pp. 177–180.
(*b*) *Trial of Sir Archibald Gordon Kinloch*, Edinburgh, 1795.

But Lord Braxfield conducted the trial with the utmost discretion and tact, and his statement of the law applicable to the facts, as laid down in his charge to the jury, strikes the modern mind as singularly sound and enlightened. Should the *Advocatus Diaboli* object that in this case Lord Braxfield's natural ferocity would be tempered by the social rank of the parties, in the third of my trials at least he had a free hand.(*a*) It was his last chance, for shortly thereafter his health broke down and the High Court of Justiciary knew him no more. The prisoner was a sanctimonious shoemaker who butchered a carrier for banknotes, with every aggravation of craft and cruelty. He admitted his guilt, but in view of the enormity of the crime Braxfield directed evidence to be led, and the pannel was allowed to cross-examine witnesses and to make a canting appeal for mercy. My Lord, in pronouncing sentence, sought to bring home to the wretch the dreadful nature of his act, and earnestly exhorted him to repentance, in words which might well befit a righteous judge of to-day.

I lack space for even a cursory examination of Lord Braxfield's conduct of the trials for sedition in 1793 and 1794, of which I have elsewhere given some account,(*b*) and shall here confine myself to a brief relation of the rebutting evidence offered to Cockburn's indictment of the Lord Justice-Clerk. I wish that every reader of the *Memorials* might supplement its perusal by a review written on its publication with admirable sense and judgment, which ought to be reprinted as a prophylactic appendix in all future editions of that work.(*c*) The defects under which Cockburn labours as an historian—party prejudice and partiality for telling good stories—and the errors and exaggerations into which he is thereby

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(*a*) Report of the trial of James M'Kean, *Caledonian Mercury*, 15th December 1796.

(*b*) *The Riddle of the Ruthvens*, pp. 56–63. See also Biographical Sketch in the *Scots Magazine*, before cited, and the volume for 1794, *passim*.

(*c*) *The Law Magazine and Law Review*, 1856, i. 233–252.

betrayed, are convincingly exposed. I am not, however, concerned with these failings further than as they affect our "subject." As to his strictures upon Lord Braxfield's behaviour on these occasions the reviewer says :—

> We have examined the Reports, which are all to be found in Vol. XXIII. of the State Trials, so ably and carefully edited by Mr. Howell, and we find nothing whatever to maintain the charge against Lord Braxfield. He concurs in the sentences moved and supported by his five brethren ; and it must be observed of those sentences, that excepting in the cases of Muir and Gerrald, perhaps also of Margarot, the sentences about the same time pronounced in England were more severe, and even long afterwards, for the same offences. . . . That Lord Braxfield had any more prominent share in those sentences than his brethren does in no manner of way appear.(*a*)

Of the "blasphemous" story before referred to about our Saviour as a reformer, for which Cockburn is the sole authority, the reviewer remarks—

> Now we have made full inquiry into this most extraordinary assertion, and we find that the words put into the judge's mouth were known in Edinburgh to be a mere invention, a jest that passed current at the time and was by all who heard it known to have—most men said—no foundation at all, while some few believed, or affected to believe, one part of the dictum, saying that Lord Braxfield might have muttered, "Muckle he made o' that"; but all, without exception, utterly denied the grossly indecent addition. . . . But for our peremptory contradiction of the story we refer rather to what is well known to all who lived at the time, that the speech was universally treated as a mere jocular invention, by way of very gross caricature of the chief.(*b*)

The "checkmate" anecdote was killed long ago; I hope that this "blasphemous" myth may join it in limbo. Finally, with regard to Cockburn's general vituperation of the Justice-Clerk the reviewer observes—

> The holding up Lord Braxfield as "the Jeffreys of Scotland" is if possible more intolerable. None, even of that most able and learned, though coarse and even violent judge's enemies, ever presumed to insinuate the least suspicion of corruption against him. Nay, all who were acquainted with him have borne testimony to his amiable and kindly disposition. He is described by the late venerable Lord President Hope,

(*a*) *The Law Magazine and Law Review*, 1856, i. 244.
(*b*) *Ibid.*, p. 246.

in a letter which appeared in the first number of the *Law Review*, vindicating him from another calumny circulated on Sir Walter Scott's authority [the "checkmate" story], as a person of a kindly nature, and a warm and steady friend. He is well known to have had an extreme abhorrence of anything mean and base, and his feelings were more warm than even his temper was hasty. That he was of the most scrupulous integrity, of the highest sense of honour in all respects, both public and private, none have ever doubted; and this is the person whom Lord Cockburn, inspired with the bitter feelings of party, thinks it fit to compare with the worst man, the most profligate and corrupt judge, that ever polluted the Bench.(*a*)

Young's prophetic refutation of Cockburn's calumnies may be read at large in my former article. His defence is of great weight, as stated by an eyewitness, a lawyer, a gentleman and a Whig; its length forbids quotation here, but the concluding paragraph, in which he sums up his case, must be repeated—

Of all men that ever lived, I think the greatest injustice has of late been done to the memory of Lord Justice-Clerk M'Queen. I knew him intimately from the first moment I came to Edinburgh, and I can truly declare that he was not merely a great lawyer and an excellent judge, but a most humane, kind-hearted and benevolent man, a friend and benefactor to all the lower classes, a most hospitable and excellent landlord; and in my humble opinion, though he was a Tory and sometimes rallied me on being a Whig, he never allowed political feelings to influence his conduct as a judge. When he acted in that capacity in the trials of the men, who are now termed the "Scots Martyrs," I do not remember that there was any difference of opinion betwixt him and the other judges on the Bench. They all joined in the same exposition of the Scotch law of sedition, nor did I then hear of one imputation on the characters of any one of them, or of the imputed "martyrdom" of the poor enthusiasts Muir and Gerrald, or the democratic agitator and blackguard Margarot.

Now, indeed, the Justice-Clerk is represented as having been an unprincipled, despotic judge, and placed on the same level with Jeffreys and those who had formerly figured in that line, whilst the most atrocious falsehoods are daily circulated regarding his brutal conduct to criminals in the Court where he presided; all which I solemnly declare, as far as I know, and I had the best cause of knowledge as to most of them, *as I shall answer to God, are false and utterly destitute of truth.*

When the sedition trials were discussed in Parliament, Lord Mansfield, who then held the office of Lord Justice-

(*a*) *The Law Magazine and Law Review*, 1856, i. 247.

General, said: "I have not the pleasure of personal acquaintance with the Lord Justice-Clerk, but I have long heard the loud voice of fame, that speaks of him as a man of pure and spotless integrity, of great talents, and of a transcendent knowledge of the laws of his country."(*a*)

Of my Lord in his social relations Cockburn declares that his fellow judges "were no friends to Braxfield privately. His mere indecency was sufficient to debar much personal intercourse. Abercromby, in particular, abhorred him."(*b*) Yet by his own account not any of their Lordships were worthy of respect or likely to be nice in their company. Dunsinnan and Henderland were "undistinguished," Abercromby was "absurdly" called by Baron Hume an ornament of the Bench, Swinton was "heavy and slow," and Eskgrove "an avaricious, indecent old wretch."(*c*) It should be superfluous to add that all these gentlemen were Tories. Lord Cockburn's judicial colleagues might indeed pray to be delivered from the scope of his reminiscences. As Bosola says in the play—

> The office of justice is perverted quite
> When one thief hangs another.

We know from Alexander Young that Sir David Dalrymple, Lord Hailes, a man of high lineage, wide culture and acknowledged worth, was on the best of terms with Braxfield, despite the fact that my Lord said of him that he "kent naething o' a cause but the neuks"; and that the only judge with whom he had no personal intimacy was Lord Kames, whose charming *vale* to his brethren on his retiral from the Bench—"Fare ye a' weel, ye bitches!"—one might have expected to appeal to Braxfield.

Lord Braxfield was twice married. By his first wife, a niece of Sir Andrew Agnew of Lochnaw, the last hereditary Sheriff of Galloway, he had two sons and two daughters. The elder son, Robert Dundas, was bred to the Bar but never practised, married Lady Lilias Mont-

(*a*) *Parl Hist.*, xxxi. 283. (*b*) *Sedition Trials*, i. 86, *n.* (*c*) *Ibid.*

gomerie, daughter of the twelfth Earl of Eglinton, succeeded on his father's death to the lands of Braxfield, Broughton and Hardington, and died without issue in 1816. John, the second son, entered the Army, became a captain in the 28th Regiment of Foot, and married an Irish lady of good family, their son succeeding to the entailed estates. Mary, the elder girl, married Sir William Honyman of Armadale, a Lord of Session; the younger, Catherine, married Macdonald of Clanranald. By his second marriage with a daughter of Lord Chief Baron Orde, Braxfield had no children. High alliances these, for Cockburn's "coarse ruffian" and his family to compass.

New evidence as to the social consideration in which Lord Braxfield was held came to light on the discovery, during alterations at No. 13 George Square, of certain visiting cards and dinner invitations addressed to the Justice-Clerk and his wife, which were found beneath the flooring of one of the upper rooms. It is curious that by the chance preservation of these pieces of pasteboard Lord Braxfield's position in Edinburgh society should be ascertainable. For particulars of this *trouvaille* I am indebted to the article by Mr. Forbes Gray already cited. Among the calling cards are those of the wife of Admiral Duncan, the hero of Camperdown; of Lady Christina Graham; and of Mrs. Brown, wife of the architect of George Square—the latter, by the way, a forebear of the present writer. The invitations include two from Sir James and Lady Colquhoun of Luss to their house in St. Andrew Square, one from the Lord Advocate and Mrs. Dundas, George Square, and another from Mr. and Mrs. Macdonald of Clanranald, Princes Street. For "an illiterate ruffian of debauched habits" this company is pretty well.

One of Lord Braxfield's most intimate friends was Sir Andrew Agnew of Lochnaw, whose niece he afterwards married. (*a*) The Justice-Clerk's relations with his first

(*a*) *The Hereditary Sheriffs of Galloway*, 1893, ii. 354 358.

wife's family were always cordial, and when in 1789 Sir Stair Agnew's daughter was to be married, all arrangements as to settlements were placed in Lord Braxfield's hands.(*a*) The only letter of his which I have seen—probably he was no great letter-writer — was upon this occasion. Written in a clear, almost feminine hand, its genial tone shows his Lordship's character in a benignant aspect:—

Stirling, 10 *Sept.* 1789.

Dear Sir,—Yours I received this morning. I have perused the scroll with attention, and in general think it well drawn. However, in order to prevent any dispute [he offers various pertinent suggestions, concluding thus:] And now permit me to wish you and your daughter much joy and happiness in the intended marriage. She is an amiable young person, and possessed of the sweetest temper and disposition, which bids fair for making a happy marriage. Indeed she is so much possessed of my good opinion that if it should prove otherwise—which God forbid!—I should pronounce it not the fault of *her*. So there is no reason to be apprehensive of any such event.

Mrs. M'Queen, who is with me here, desires to join with me in love and best wishes to you and the bride. And I am, dear Sir, your most obedient humble servant,

ROBERT M'QUEEN.

Sir Stair Agnew of Lochnaw, Bart.(*b*)

I will leave it at that: the reader has now before him both sides of the Braxfield case and can pronounce his own judgment. Lord Cockburn has had the Bench to himself long enough.

For two years before his death Lord Braxfield, whose physical powers had been as great as those of his intellect, fell a prey to a complication of diseases. In the summer of 1798 these complaints were much increased, and by the New Year his condition was hopeless. He died at No. 13 George Square on 30th May 1799, having just crossed the threshold of his seventy-eighth year, and on 5th June was laid to rest in the family burial-place at Lanark.

(*a*) *The Hereditary Sheriffs of Galloway*, 1893, ii. 387.
(*b*) *Ibid.*, pp. 388–389.

What his fellow-countrymen thought of him as a citizen and a judge may be read in his obituary notices.(*a*)

I made one autumn day a sentimental journey to his grave and birthplace. He lies beneath the ruined walls of St. Kentigern's forsaken shrine, over against high Tinto and the sunset. Strangely enough, although three of his descendants are commemorated, the headstone does not bear his name. The house of Braxfield stands upon the pleasant slopes of a green and watered valley, shaded by immemorial trees and girt about with undulating pastures, while ever on the ear falls the murmurous song of Clyde. The mansion, four square, with a courtyard in the centre—the back said to be older than the front—is now unoccupied, and fast tending to decay. With its many chambers, curious stairways, and stone-vaulted passages, it would be in the past a very paradise of childhood. At some personal risk I penetrated to the subterranean secrets of the wine cellar—a commodious catacomb, whither my Lord, candle in hand, must often have preceded me in quest of buried treasures. But the goodly bins hold nothing now save cobwebs and the detritus of their ancient strength. At some distance from the house, in a sheltered hollow of the park, is a great old-world garden, its masoned walls enclosing flower-embroidered borders and wandering alleys. You can fancy the old judge pacing these paths on sunny afternoons in vacance time, unmindful of Lord Stair and of the Dutch civilians. For it is here, amid the scenes so close to his affections where every hour he could command was spent, that his memory peculiarly abides. The Edinburgh that he knew has vanished; George Square is transformed, the courtroom in which he so long held sway is gone. Only here, under these age-old trees beside the ageless river, would Lord Braxfield's spirit feel at home.

By a singular irony of circumstance Braxfield House was after 1808 tenanted for a time by Robert Owen (1771-

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(*a*) *Edinburgh Magazine*, July 1799, p. 80; *Scots Magazine*, July 1799, p. 496.

1858), the father of New Lanark, a pioneer of Socialism and a harbourer of Radicals.(*a*) How my Lord would have regarded this invasion of his sacred hearth may be awfully imagined. In 1914 the property passed from the Braxfield family into other hands. Of the last M'Queen of Braxfield, John Rainier M'Queen, great-grandson of the Justice-Clerk and last lineal inheritor of his lands and Tory principles, an interesting account is given by Mr. Bernard Holland.(*b*) It is the end of "an auld sang."

I have ever pitied the hard fortune of the dead in their incapacity to combat posthumous aspersion. The nimble brain, the ready arm, so vigilant to justify and to defend, no longer guard the citadel from presumptuous foes. Once a man is buried any dog may bark about his grave. Our memories are at the mercy of the first comer minded to cast a stone, and our hope rests only in the charity of our survivors. *De mortuis* is comfortable counsel; but Sir Thomas Browne's plea for civility to the ashes of our forefathers too often falls upon deaf ears. Elsewhere I have sought to rescue Robert Fergusson from the opacities of purblind editors. In the present case my task has been less onerous: on the one hand is the white light of contemporary evidence; on the other, the partial ray of Lord Cockburn's Whiggish lantern. "Whoever puts Fergusson right with fame," wrote Stevenson once, "cannot do better than dedicate his labours to the memory of Burns, who will be the best delighted of the dead." Wherefore I am bold to devote to the creator of Weir of Hermiston this essay in vindication of his great exemplar.

(*a*) *Life of Robert Owen*, 1857, *passim*.
(*b*) *Blackwood's Magazine*, December 1913, pp. 816-823.

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"But this notice of Mr. Roughead is turning into mere repetition of his stories; and what else can one do? One must not stop, however, without acknowledgment and thanks for the last essay in the book, which is the story of Robert Fergusson, the young Edinburgh poet, including plenty of quotations, and helping (as Mr. Roughead indicates) to make up the strange omission of the poet's name, and neglect of his valuable evidence by 'Edinburgh's Latest Historian.'"

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The Spectator.—"The dark places of Scots criminology have already yielded literary treasure to those who, like Scott and Stevenson, knew where to look for it. But the store is inexhaustible, and personally we find a flavour about the criminous annals of the northern kingdom which is absent from the Newgate Calendars of more populous lands. Mr. Roughead, who has done some excellent work in this branch of historical research, gives us in the present volume a collection of short studies ranging from the days of the Reformation to the recollection of our own age. He has precisely the kind of style which is suited for a legal historian who would also be popular—clear, urbane, witty, pleasantly allusive, reminding us now of J. B. Atlay and now of Andrew Lang. Indeed, of all writers living he seems most to have caught Lang's curious grace. He is also an excellent teller of a story—no small gift in the chronicler. The studies, as we have said, cover a wide area, and embrace crimes into which some element of strangeness entered, crimes which are still obscure, and crimes where the guilt is not seriously in doubt."

The Saturday Review.—"Mr. Roughead, an able Scottish lawyer, has won a reputation for his talent in the kind of work of which these trials are so excellent an example. Mr. Andrew Lang claimed him as a fellow-student of legal and historical mysteries, and these 'criminal biographies' were suggested by Mr. Lang; they were read by him in manuscript, and he had intended to write an Introduction. They are not edited reports, but studies by Mr. Roughead based upon the facts, the personages, and the times of the particular trials. Most of them owe very much of their interest to Scottish historical, legendary, and traditional events, and to public and family episodes and personages which give a picturesque and more than a forensic environment to the actual trial. Mr. Roughead is, in short, as much antiquary as student of criminology, and he has a literary taste which avoids the unnecessarily sordid and brutal. None of these trials is hackneyed; they are all unfamiliar and of first impression."

The Outlook.—"Mr. Roughead has secured a great reputation for his admirable editing of notable Scottish trials, especially those of Deacon Brodie and Captain Porteous; and in the present volume, in spite of the fact that the recorded trials are of less intrinsic consequence, he has fully maintained the high quality of his previous work. . . . . Each case presents some peculiar point of interest, either of evidence or criminal psychology, and the analysis of the motives for the crimes and the evidence produced is excellent. Mr. Andrew Lang read the book in manuscript, and had he lived would have contributed an Introduction; and we cannot give the author higher praise than to say it is, in our opinion, a work in every way worthy of the commendation of that fine connoisseur of mysteries and keen sifter of evidence."

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